Supreme Court of the United States

OCTOBER TERM, 1971

No. 1967

REUBEN O'D. ASKEW, et al.,

Appellants,

v.

THE AMERICAN WATERWAYS OPERATORS, INC., et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

NOTICE OF APPEAL FILED DECEMBER 23, 1972
PROBABLE JURISDICTION NOTED APRIL 17, 1972

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 1082

REUBIN O'D. ASKEW, as Governor of the State of Florida; RICHARD B. STONE, as Secretary of State of the State of Florida; ROBERT L. SHEVIN, as Attorney General of the State of Florida; FLOYD T. CHRISTIAN, as Commissioner of Education of the State of Florida; DOYLE E. CONNER, as Commissioner of Agriculture of the State of Florida; FRED O. DICKINSON, JR., as Comptroller of the State of Florida; THOMAS D. O'MALLEY, JR., as Treasurer of the State of Florida; as an constituting THE DEPARTMENT OF NATURAL RESOURCES, State of Florida; RANDOLPH HODGES, as Executive Director, and TOM SIMPSON, as Conservation Officer of Duval County, DEPARTMENT OF NATURAL RESOURCES, State of Florida; and THE STATE OF FLORIDA,

Appellants

vs.

THE AMERICAN WATERWAYS OPERATORS, INC., a Delaware corporation; GULF ATLANTIC TOWING CORPORATION, a Florida corporation; GLIDDEN-DURKEE, a division of SCM, CORPORATION, a New York corporation; DIXIE CARRIERS, INC., a Delaware corporation; OIL TRANSPORT COMPANY, INCORPORATED, a Louisiana corporation; NATIONAL MARINE SERVICE, INC., a Delaware corporation; THE REVILO CORPORATION, a Florida corporation; EASTERN SEABOARD PETROLEUM COMPANY, INC., a Florida corporation; NILO BARGE LINE, INC., a Delaware corporation; STEUART TRANSPORTATION COMPANY, a Delaware corporation; INTER-

STATE OIL TRANSPORT COMPANY, a Delaware corporation; FEDERAL BARGE LINES, INC., a Delaware corporation; GULF CANAL LINES, INC., a Texas corporation; and INGRAM OCEAN SYSTEM, INC., a Delaware corporation, all authorized to do business in the State of Florida,

Appellees,

and

SUWANNE STEAMSHIP CO., a Florida corporation; COMMODORES POINT TERMINAL CORPORATION, a Delaware corporation; AMERICAN INSTITUTE OF MERCHANT SHIPPING; ASSURANCE FORENINGEN GARD; ASSURANCE FORENINGEN SKULD; THE BRITIANNIA STEAM SHIP INSURANCE ASSOCIATION, LIMITED; THE JAPAN SHIP OWNERS MUTUAL PROTECTING AND INDEMNITY ASSOCIATION; THE LIVERPOOL AND LONDON STEAM SHIP PROTECTION AND INDEMNITY ASSOCIATION, LIMITED; THE LONDON STEAM SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LIMITED; NEWCASTLE PROTECTION AND INDEMNITY ASSOCIATION; THE NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCIATION, LIMITED; THE STANDARD STEAMSHIP OWNERS' PROTECTION & INDEMNITY ASSOCIATION; THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (BERMUDA), LIMITED; THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION, LIMITED; SUNDERLAND STEAMSHIP PROTECTING AND INDEMNITY ASSOCIATION; SVERGIES ANGFARTYGS ASSURANSFORENING; THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA), LIMITED; THE WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG); and their respective members,

Intervening Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

THE AMERICAN WATERWAYS OPERATORS, INC., et al.,
PLAINTIFFS,

vs.

REUBIN O'D. ASKEW, et al.,
DEFENDANTS.

COMPLAINT

COMES NOW the plaintiffs, and for cause of action against the defendants, complain and allege as follows:

1. This action is for an injunction pursuant to the provisions of Sections 2281 and 2284(3), Title 28, United States Code. Sought to be adjudged unconstitutional and unenforceable is the whole or separable parts of Chapter 70-244, Laws of Florida, 1970, compiled as Chapter 376, Florida Statutes, and the rules and regulations promulgated thereunder. The Constitutional provisions involved are: Article I, Section 8, Clause 3 (interstate and foreign commerce); Article VI, Clause 2 (supreme law of the land); Article III, Section 2 (Federal Maritime Jurisdiction); and the Fourteenth Amendment (due process and equal protection of law) of the Constitution of the United States.

2. The validity of Chapter 70-244 (which will be referred to hereafter as the "*State Act*") must be considered in conjunction with Public Law 91-224, (April 3, 1970) enacted by the 91st United States Congress prior to the State enactment, bearing the title: The Water Quality Improvement Act of 1970 (which will be hereafter referred to as the "*Federal Act*", and which act amended the Federal Water Pollution Control Act (62 Stat. 1155, as amended, 33 U.S.C. 466 et. seq.).

3. The plaintiff THE AMERICAN WATERWAYS OPERA-

TORS, INC. is a Delaware corporation (hereinafter referred to as the AWO) and is the nonprofit national trade association representing the barge and towing industry. Many of the approximately 223 members of AWO operate towing vessels and barges and small self-propelled tankers and freighters in the performance of transportation services into and upon the navigable waters of the United States, utilizing the inland waterways and intercoastal, coastal and harbor facilities in all the states of the nation where such exist. Numerous other members of AWO consist of shipyard companies, terminal operators and watercraft service companies whose businesses are directly related to shipping by navigable water. AWO has its executive offices at 1250 Connecticut Avenue, Suite 502, Washington, D. C. Many members of AWO are domiciled in the State of Florida and with other members domiciled elsewhere are all engaged in interstate commerce or other maritime activities operating into and upon the navigable waters of the United States to and from ports in the State of Florida.

4. The plaintiff GULF ATLANTIC TOWING CORPORATION is a Florida corporation located at 104 East Platen Road, Jacksonville, Florida (hereinafter referred to as GATCO) and is a member of AWO engaged in interstate commerce operating barges into and upon the navigable waters of the United States in interstate commerce to and from Florida ports, and also is a duly licensed terminal facility. GATCO operates its barges and tankers in interstate and international commerce both for private industry and under contract to the United States in support of its military services.

5. The plaintiff GLIDDEN-DURKEE is a division of SCM, CORPORATION, a New York Corporation authorized to do business in the State of Florida, having its place of business at Jacksonville, Florida. This plaintiff is engaged in interstate commerce operating barges and tankers into and upon the navigable waters of the United States to and from Florida ports.

6. The plaintiff DIXIE CARRIERS INC. is a Delaware corporation authorized to do business in the State of Florida,

having its principle place of business at Houston, Texas. This plaintiff is engaged in interstate commerce operating barges into and upon the navigable waters of the United States to and from Florida.

7. The plaintiff OIL TRANSPORT COMPANY, INCORPORATED is a Louisiana corporation authorized to do business in the State of Florida, having its principle place of business at New Orleans, Louisiana. This plaintiff is engaged in inter-state commerce operating barges and tankers into and upon the navigable waters of the United States to and from Florida ports.

8. The plaintiff NATIONAL MARINE SERVICE, INC. is a Delaware corporation authorized to do business in the State of Florida, having its principle place of business at St. Louis, Missouri. This plaintiff is engaged in interstate commerce operating barges into and upon the navigable waters of the United States to and from Florida ports.

9. The plaintiff THE REVILO CORPORATION is a Florida corporation authorized to do business in the State of Florida, having its principle place of business at Palatka, Florida. This plaintiff is engaged in interstate commerce operating barges into and upon the navigable waters of the United States to and from Florida ports.

10. The plaintiff EASTERN SEABOARD PETROLEUM COMPANY, INC., a Florida corporation having its principle place of business in Jacksonville, Florida, is engaged in interstate commerce as a petroleum cargo carrier, operating barges into and upon the navigable waters of Florida, Georgia and Alabama, primarily transporting fuel oil.

11. The plaintiff NILO BARGE LINE, INC. is a Delaware corporation authorized to do business in Florida, having its principle place of business in St. Louis, Missouri, and is engaged in interstate commerce operating barges into and upon the navigable waters of the United States to and from Florida ports.

12. The plaintiff STEUART TRANSPORTATION COMPANY is a Delaware corporation authorized to do business in Florida, having its principle place of business in Piney Point, Maryland, and is engaged in interstate commerce operating

barges and tankers into and upon the navigable waters of the United States to and from Florida ports.

13. The plaintiff INTERSTATE OIL TRANSPORT COMPANY is a Delaware corporation authorized to do business in Florida, having its principle place of business in Philadelphia, Pennsylvania, and is engaged in interstate commerce operating barges and tankers into and upon the navigable waters of the United States to and from Florida ports.

14. The plaintiff FEDERAL BARGE LINES, INC. is a Delaware corporation authorized to do business in Florida, having its principle place of business in St. Louis, Missouri, and is engaged in interstate commerce operating barges into and upon the navigable waters of the United States to and from Florida ports.

15. The plaintiff GULF CANAL LINES, INC. is a Texas corporation authorized to do business in Florida, having its principle place of business in St. Louis, Missouri, and is engaged in interstate commerce operating barges into and upon the navigable waters of the United States to and from Florida ports.

16. The plaintiff INGRAM OCEAN SYSTEM, INC. is a Delaware corporation authorized to do business in Florida, having its principle place of business in New Orleans, Louisiana, and has contracted to engage in interstate commerce operating barges and tankers into and upon the navigable waters of the United States to and from Florida ports.

17. The business and operation of each of the plaintiffs involves the transportation and handling of cargo which comes within the purview of both the *Federal Act* and the *State Act*.

18. Each of the plaintiffs, as interstate carriers, contributes to and facilitates the progress of interstate commerce in the United States and significantly advances the public welfare of Florida and the nation in its relations thereto. Each of the plaintiffs further recognizes and accepts the fundamental recreation and conservation values found by the Florida Legislature and expressed in the preamble to the *State Act* and will do all reasonable things for the preservation and

protection thereof.

19. The defendants REUBIN O'D. ASKEW, as Governor of the State of Florida; RICHARD B. STONE, as Secretary of State of the State of Florida; ROBERT L. SHEVIN, as Attorney General of the State of Florida; FLOYD T. CHRISTIAN, as Commissioner of Education of the State of Florida; DOYLE E. CONNOR, as Commissioner of Agriculture of the State of Florida; FRED O. DICKINSON, JR., as Comptroller of the State of Florida; and THOMAS D. O'MALLEY, JR., as Treasurer of the State of Florida; as and constituting THE DEPARTMENT OF NATURAL RESOURCES, State of Florida; and RANDOLPH HODGES, as Executive Director, and TOM SIMPSON, Conservation Officer of Duval County, DEPARTMENT OF NATURAL RESOURCES, State of Florida, under Chapter 20.25, Florida Statutes, and the *State Act*, are granted the power and duty to enforce, insofar as is material to this cause, the responsibilities set forth therein and the rules and regulations therein authorized. The defendant RANDOLPH HODGES, as Executive Director of the Department of Natural Resources is by Section 370.02(3)(b), Florida Statutes, charged with the statutory duty to act as the agent for the Board in coordinating and directing its activities in the discharge of its responsibilities. The defendant TOM SIMPSON, Conservation Officer of Duval County, is the officer of the department who has the duty and responsibility to enforce the provisions of the *State Act*, and to execute the policies promulgated by the department and its agent the Executive Director in the event of any alleged violation of the *State Act* in Duval County, Florida. A copy of the *State Act* is attached hereto as Exhibit 1.

20. Under the presumed authority thereof, the DEPARTMENT OF NATURAL RESOURCES, on December 19, 1970, adopted and promulgated administrative rule "oil spill" (Chapter 16 B-16) relating to terminal facility regulation, a copy of which is attached hereto as Exhibit 2; and further, on January 26, 1971, promulgated and adopted administrative rule "oil spill bill financial responsibility—vessels," (Chapter 16 B-16.08), a copy of which is attached as Exhibit 3.

21. The defendant Board, acting through its agents, officials, and employees has notified the public and the plaintiffs that it is presently implementing, administering and enforcing the provisions of the *State Act* and will implement, administer and enforce Rule 16B-16.08 After March 15, 1971; and plaintiffs allege that this will, in fact, be accomplished unless defendants are restrained by this Court. Defendants are presently issuing warning citations to plaintiffs and others similarly situated for alleged violations of the *State Act* and rule.

22. The *Federal Act,* together with pertinent prior Federal laws and subsequent rules and regulations adopted under the authority thereof, provides a comprehensive program having as its purpose the effective and efficient prevention and removal of the discharge of pollutants into any and all of the navigable waters of the United States or upon the adjoining shorelines or waters of the contiguous zone. Prevention measures, penalties, and clean-up by those responsible and by government action, as well as fines, cost and damage recovery procedures against the persons or companies responsible for illegal discharges, are provided. The full enforcement of this Federal plan is now underway, and it provides effective means for the prevention, clean-up and reimbursement incident to oil spills to which the *State Act* is addressed, except as hereinafter set forth. The Congress of the United States has, thus, preempted the field of preventive safeguards, notice, penalties, clean-up, and reimbursement made necessary by any pollution of navigable waters of Florida and of the United States through illegal discharges from ships or on-shore facilities. The *State Act* is, thus, a burden on interstate commerce in violation of the commerce clause of the Constitution of the United States (Article I, Section 8) and Article VI, Clause 2 of the United States Constitution, which declares the laws of the United States to be "the supreme law of the land."

23. The *State Act* embraces and authorizes a very broad program of operation by its direct terms, as well as under regulatory powers sought to be delegated. The defendants are required to establish 11 regional, coastal districts (one

embracing each of the 11 deep-water ports of Florida). Each district is authorized to have rules and regulations to meet its particular requirements, including a contingency plan of response, organization and equipment for handling emergency clean-up operations. Beyond this, State plans are required to include state-wide detail emergency operating procedures, operating and inspection requirements, requirements as to containment gear, procedures and methods for reporting a discharge, a port manager for each district having authority to board and inspect vessels for sea-worthiness. The State is further mandated to adopt procedures, methods, means and equipment to be used in clean-up, criteria and plans to meet oil pollution, requirements for minimum weather and sea conditions for permitting entry into any Florida port, and the requirement that prior to the entry the master shall report to the port manager any discharge, any mechanical difficulty and any denial of entry elsewhere during the vessel's current cruise. All of the above, by the terms of the *State Act*, are to be performed independently of, but in cooperation with, the Federal authorities. Beyond and in addition, every municipality and every county of the State is expressly authorized to pass ordinances or special acts covering the same subject matter (376.19, F.S.), with the exception that any such ordinance or special act shall not be in direct conflict with the *State Act*, and the same may not include a similar program of licensing and fees. The requirement on the plaintiffs to attempt to comply with this maze of local, county and state regulations is a burden on interstate commerce of catastrophic proportions and constitutes a taking of the plaintiffs' property and the destruction of plaintiffs' businesses. If the State of Florida may validly do what it is seeking to do in this field, then so may the 27 other coastal states, as well as every state bordering on navigable waters of the United States (which now includes Oklahoma).

24. The *State Act* duplicates and conflicts with many of the obligations of the prior *Federal Act* and regulations thereunder and sets up a new highly complicated, costly and unnecessary State bureaucracy, with the costs thereof required to be borne by the plaintiffs and others similarly situated, in

violation of plaintiffs' rights and privileges under the Fourteenth Amendment of the Constitution of the United States.

25. The absence of procedural and substantive due process of law, the excessive burdens imposed on interstate commerce, and maritime activity, the conflicts in operation of the *State Act* with Federal maritime law and with the *Federal Act*, all clearly appear from the following:

(a) Under the *Federal Act*, a means is provided for determining the responsibility for, and penalizing those guilty of, causing an unlawful discharge of pollutants. Procedural due process is effected by notice to any accused and an opportunity for him to be heard (Section 11(5)). No such notice or opportunity is provided under the State Act. In fact, State authorities are directed to move upon a finding that a discharge has occurred. The State authorities are further authorized to predetermine guilt by means available to them. Only after an accused has been "determined to be liable" by the State is he accorded the opportunity to raise one or more of the defenses (1) that the spill resulted from act of war; (2) by an act of government, state or federal; (3) by an act of God; or (4) by the act or omission of third parties. And these defenses may be raised only in the discretion of the State authorities as a "privilege conferred", not "as a right granted". Then is added the due process coup de gras: the administrative findings by the State are by the express term of the State act declared to be "*conclusive*".

(b) The *Federal Act* contemplates a hearing in court as a condition precedent to the assessment of a penalty unless the same is compromised or agreed to by the parties. No such hearing is provided by the *State Act*. The clean-up cost is alleged under the *Federal Act* to constitute a lien on the vessel which may be recovered in an action *in rem* in the Federal District Court; and the United States is further authorized to bring an action in a court of competent jurisdiction to recover its further costs when allowed. Under the terms of the *State Act*, the state has no obligation to adjudicate its claims in any court.

(c) Under the *State Act*, the fine for causing a spill may

be as much as $50,000 per day, whereas under the *Federal Act*, the maximum is $10,000 for each offense. The *Federal Act* requires as a condition precedent to the assessment of a penalty the finding that the discharge was knowingly made and that the owner or operator had been given notice and opportunity for hearing. The secretary is authorized to compromise the penalty and is provided reasonable standards to assist him in determining the proper amount of the fine. These include: (1) appropriateness; (2) size of the business of the operator; (3) the effect upon the owner; (4) his ability to remain in business; and (5) the gravity of the violation. No similar provisions are included in the State Law.

(d) The *Federal Act* affirmatively provides specific limitations on the amounts that those found responsible may be required to pay in reimbursement to the U. S. Government for costs expended in clean-up, unless the Government is able to show that the discharge "was the result of willful negligence or willful misconduct within the privity and knowledge of the owner." The *State Act* provides no limitation of liability whatsoever for costs expended for clean-up, environmental damage, or damage to third parties in direct conflict with the aforesaid provisions of the *Federal Act* and with the Federal Limitation of Liability Act (Act of March 3, 1851, Ch. 43, 9 Stat. 635, as amended, 46 U.S.C. §§ 181-189 (1964)) which provides inter alia that the liability of the owner of any vessel for any loss, damage, or injury by collision or for any act done without the privity or knowledge of such owner shall not exceed the amount or value of the interest of such owner in such vessel and her freight then pending.

(e) The *State Act* (Section 376.07(e)) provides that the State's "response team shall act *independently* of agencies of the Federal government but it is directed to cooperate with any Federal clean-up operation." The effect of this is to provide a double capability and a double operation separately manned and directed and is, at best, a plan which will result in enormous waste of State effort duplicating Federal action, and a squandering of the fees exacted from plaintiffs and the contributions made from the Florida treasury. At worst, it

brings the two (or more) government teams face to face in conflict to perform the same mission. A confusion of ultimate responsibility arises and the stage is set for law-men scapegoats for failure, which each government may appropriate as best fits its own political posture. Notwithstanding, and in conflict with these provisions of the *State Act* (376.07(e)), are the provisions of Section 376.09(2) thereof. Here, it is provided that if an unlawful discharge occurs "into or upon the navigable waters of the United States, the (State) department shall act in accordance with the national contingency play (developed under the *Federal Act*) and the costs of removal incurred by the (State) department shall be paid in accordance with the applicable provisions of said law; that is, into the Federal treasury.

25. For many years, the plaintiffs have been engaged severally in their businesses and now meet all requirements of valid State and Federal law to pursue their businesses in Florida, except for the obligations imposed by the *State Act*. They and the other members of AWO have a long record of operating with full public responsibility. Nevertheless, the ships of plaintiffs will, pursuant to Rule 16 B-16.08, be refused entry to any port in Florida unless a certificate of financial responsibility has been issued to plaintiffs by the defendants. Such a certificate will not be issued unless the plaintiffs file with the defendants evidence of "financial responsibility" as required, based on the capacity of the terminal facility or tonnage of the vessel by either posting insurance, surety bonds, qualifying as a self-insuror, or in some other manner providing evidence of financial responsibility suitable to the defendants. The plaintiffs severally have made diligent efforts to obtain insurance and have been unsuccessful due to the unlimited scope of liability provided under the 1970 *State Act*. Such insurance has not been denied under the *Federal Act* because this law imposes specific limitations on the liability of the insureds. None of plaintiffs' ships have been refused entry because of not having this State certificate up to the time of the filing of this complaint, by some act of grace or indulgence by defendants, but plaintiffs have been warned that the defendants will

enforce to the fullest the *State Act* and its said rules, commencing on March 15, 1971.

26. In order for plaintiffs to continue to engage in interstate and international commerce utilizing Florida ports, it is necessary under the *State Act* that they jeopardize their entire assets to comply with the demands of this one state. And this potential liability gives no consideration to plaintiffs' excellent record in preventing spills, nor is it conditioned upon a finding of any negligence on the part of agents engaged in operating plaintiffs' vessels or licensed terminal facilities. The determination of liability is authorized to be made initially be a nonjudicial administrative State agency for the State benefit and for the benefit of third parties, without affording to the plaintiffs any opportunity to present defenses to show why they should not be held liable for the pollution complained of. This condition has resulted in plaintiffs' inability to induce brokers representing insurance and bonding companies to write bonds or insurance for plaintiffs as contemplated by the *State Act*.

27. The *State Act*, in most of its terms and requirements, is in violation of Article VI, Clause 2, of the United States Constitution, which declares that the laws of the United States are the supreme law of the land in areas properly subject to congressional control. The maritime activities of the plaintiffs in interstate and international commerce are within congressional control. The *Federal Act* and other prior federal statutes in the field, demonstrate that the Congress has in fact and in law exercised its constitutional power of preemption. Section 11(o)(1)(2) and (3) indicate a congressional intent to permit the states or local governments to take steps not in conflict with the Federal program. But by Section 11(k)(l), the power of the President to delegate is limited to Federal agencies. Further, under the Federal Contingency Plan (Exhibit 5), which was approved and promulgated prior to the enactment of the *State Act*, it is provided only that:

> "State and local governments, industry groups, the academic community and others are encouraged to commit resources for response to a spill. Their specific commitments are outlined by the regional plans. Of

special relevance here is the organization of a standby scientific response capability." (Section 203.1)

There is nothing here which may be said to contemplate a parallel State enforcement program, the imposition of severe state burdens on interstate shipping or maritime activities, or any other State Act in conflict with the *Federal Act*.

28. The plaintiffs and others similarly situated have entered into contracts over a period of many years the terms of which require them to transport oil and other petroleum products, by-products and other products within the contemplation of the *State Act*, and the plaintiffs are now prohibited from complying with their obligations under these contracts by said law.

29. Each of plaintiffs is now standing in imminent danger of serious harm. Each is exposed to liability in unlimited amounts which may occur at any time for damages and costs arising from spills that its agents and employees did not cause, and for which the plaintiffs may not justly be held accountable. The peril is exacerbated by the limitations imposed by the *State Act* on plaintiffs' rights of defense, and the absence of limitations in said act on plaintiffs' liability for costs and damages. This condition has directly resulted in plaintiffs being unable to obtain the protection of liability insurance in the usual market place, notwithstanding their diligent efforts to procure such. Such insurance is essential to plaintiffs' stability, to its ability to obtain loans from banks, to market its stock, and otherwise operate and maintain a successful, viable business. Thus plaintiffs' businesses are now placed in serious jeapardy, and if these conditions are allowed to continue, the losses to plaintiffs will be irreparable.

30. *The State Act* (Chapter 376, Florida Statutes) is unconstitutional and void in that it violates the provisions of the United States Constitution in the following respects:

(a) The statute authorizes the State agency to make a finding of fault as to the plaintiffs or others similarly situated without affording to the plaintiffs an opportunity to be heard and, therefore, deprives the plaintiffs and others similarly situated of procedural due process of law as guaranteed by

the Fourteenth Amendment of the United States Constitution.

(b) The statute is unconstitutional and void in that the same constitutes a violation of Article III, Section 2, of the Constitution of the United States, which reserves the judicial power in all cases affecting admiralty and maritime jurisdiction to the United States courts.

(c) The statute deprives plaintiffs of substantive due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution in that the same amounts to confiscation of plaintiffs' property, interferes with plaintiffs' right of contract, and constitutes a taking of plaintiffs' property without just compensation.

(d) The statute is unconstitutional and void in that it attempts to cover an area preempted by the Federal Government and is in violation of the commerce clause of the United States Constitution.

(e) The statute is unconstitutional and void in that the same constitutes an unreasonable burden on interstate commerce in violation of the United States Constitution as it attempts to regulate and burden maritime activities in interstate and international commerce.

(f) The statute deprives plaintiffs of the right of equal protection of the laws as guaranteed by the Fourteenth Amendment of the Federal Constitution in that the same seeks to regulate named materials when carried as cargo but does not regulate the transportation of the same materials when carried in the same or larger quantities other than as cargo.

(g) The statute is unconstitutional and void in that it violates Article VI, Clause 2, of the United States Constitution, which declares that constitution, treaties, and laws of the United States, constitute the supreme law of the land.

31. Plaintiffs have no adequate remedy at law to prevent irreparable harm except by way of injunction to restrain the defendants in the enforcement, execution and administration of the *State Act*.

WHEREFORE, Plaintiffs, pursuant to the provisions of Sections 2281 and 2284 of Title 28, United States Code, pray

that this Court:

(1) Convene a statutory court of three judges for the purpose of hearing and determining this cause at the earliest practicable date;

(2) Adjudge and declare to be in violation of the Constitution of the United States, and therefore void, the whole or separable parts of Chapter 70-224, Laws of Florida, 1970 (Chapter 376, Florida Statutes);

(3) Issue a preliminary and permanent injunction restraining and enjoining the defendants from enforcing, executing, administering or in any manner giving effect to the provisions of Chapter 70-224, Laws of Florida, 1970 (Chapter 376, Florida Statutes), which are adjudged and declared to be in violation of the Constitution of the United States;

(4) Issue a temporary restraining order pursuant to Section 2284(3) of Title 28, United States Code, restraining the defendants from enforcing, executing or administering the whole or separable parts of Chapter 70-224, Laws of Florida, 1970 (Chapter 376, Florida Statutes);

(5) Grant plaintiffs' costs and disbursements and grant plaintiffs such other and further relief as may be meet and just in the premises.

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(Jurats omitted in printing)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

THE AMERICAN WATERWAYS OPERATORS, et al.,
PLAINTIFFS,

and

AMERICAN INSTITUTE OF MERCHANT SHIPPING ASSURANCEFORENINGEN GARD, et al., and their respective members,

INTERVENING PLAINTIFFS,

vs.

HON. REUBIN O'D. ASKEW, et al., DEFENDANTS.

The Complaint of the American Institute of Merchant Shipping, Assuranceforeningen Gard, Assuranceforeningen Skuld, The Britannia Steam Ship Insurance Association, Limited, The Japan Ship Owners Mutural Protecting and Indemnity Association, The Liverpool and London Steam Ship Protection and Indemnity Association, Limited, The London Steamship Owners' Mutual Insurance Association Limited, Newcastle Protection and Indemnity Association, The North of England Protecting & Indemnity Association Limited, The Standard Steamship Owners' Protection and Indemnity Association Limited, The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited, The Steamship Mutual Underwriting Association Limited, Sunderland Steamship Protecting & Indemnity Association, Sveriges Angfartygs Assuransforening, The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, The West of England Ship Owners Mutual Protection and Indemnity Association (Luxembourg) and their respective members, by their attorneys, Fowler, White, Gillen, Humkey, Kinney & Boggs; Haight, Gardner, Poor & Havens, and Healy & Baillie, respectfully alleges, on information and belief, as follows:

PARTIES

1. Intervening Plaintiff The American Institute of Merchant Shipping ("the Institute") is a non-profit corporation organized under and existing pursuant to the laws of the District of Columbia and is the national trade association of the American steamship industry. It is composed of 35 American companies which own and operate approximately 520 United States flag, ocean-going vessels of all types, engaged in the domestic and foreign trades. Many of its members have scheduled calls of their vessels at Florida ports and others may wish to serve such ports in the future. The Institute and its members therefore have a substantial interest in the Florida Oil Spill and Pollution Control Act (Ch. 70-244, Laws of Florida, 1970 ("the Florida Act")) and the Regulations issued thereunder.

2. Intervening Plaintiffs Assuranceforeningen Gard and Assuranceforeningen Skuld are corporations organized under and existing pursuant to the laws of the Kingdom of Norway.

3. Intervening Plaintiffs the Britannia Steam Ship Insurance Association, Limited; the Liverpool and London Steam Ship Protection and Indemnity Association, Limited; The London Steam-Ship Owners' Mutual Insurance Association Limited; Newcastle Protection and Indemnity Association; The North of England Protecting & Indemnity Association Limited; The Standard Steamship Owners' Protection and Indemnity Association Limited; and The Steamship Mutual Underwriting Association Limited; and Sunderland Steamship Protecting & Indemnity Association are corporations organized under and existing pursuant to the laws of the United Kingdom of Great Britain and Northern Ireland.

4. The Japan Ship Owners Mutual Protecting and Indemnity Association is a corporation organized under and existing pursuant to the laws of the Empire of Japan.

5. The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, are corporations organized under and existing pursuant to the Laws of Bermuda.

6. Sveriges Angfartygs Assuransforening is a corporation organized under and existing pursuant to the laws of the Kingdom of Sweden.

7. The West of England Ship Owners Mutual Protection and Indemnity Association (Luxembourg) is a corporation organized under and existing pursuant to the laws of the Grand Duchy of Luxembourg.

8. The Associations described in Paragraphs "2" to "7", inclusive ("the Association"), are composed of owners and operators of approximately three quarters of the world's ocean-going vessel tonnage, flying the flags of almost every maritime country, including approximately 4,000,000 tons under American flag. A substantial number of vessels owned or operated by members of the Associations have scheduled calls of their vessels at Florida ports, and others may wish to serve such ports in the future. The members of each of the Associations mutually insure one another on the indemnity principle, through the medium of their particular Association, against liabilities of numerous types arising out of the ownership and operation of their vessels, including liabilities for pollution damage caused by the discharge of oil and other substances from their vessels. The Associations and their respective members therefore have a substantial interest in the Florida Act and Regulations.

9. Defendants and their respective positions and responsibilities are described in Paragraphs "19", "20" and "21" of the original complaint in this action, filed on behalf of original Plaintiffs The American Waterways Operators, Inc., *et al.* on March 8, 1971, the allegations of which paragraphs are incorporated herein with the same force and effect as though herein set forth at length.

10. Defendants are citizens of the State of Florida.

JURISDICTION

11. This Honorable Court has jurisdiction of this cause by virtue of Title 28 U.S.C. §1331 (1964), and under the following provisions of the Constitution; Article I, Section 8, Clause 3 (Regulation of Commerce); Article I, Section 9,

Clause 18 (Necessary and Proper Laws); Article III, Section 2, Clause 3 (Admiralty); Article VI, Clause 2 (Supreme Law of the Land); Fifth Amendment (Due Process Clause); Fourteenth Amendment (Due Process and Equal Protection Clauses), and precepts derived from the Constitution of the United States as a whole. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000. This Honorable Court therefore has federal question jurisdiction of this action under 28 U.S.C. §1331 (1964). All named plaintiffs in this action are foreign corporations; all defendants are citizens of Florida and the amount in controversy, exclusive of interest and costs, exceeds $10,000. This Honorable Court therefore has diversity jurisdiction under Title 28 U.S.C. § 1332 (1964).

AS AND FOR A FIRST CAUSE OF ACTION:

12. Article III, Section 2 of the Constitution extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and Article I, Section 8, Clause 18, provides that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States, or in any Department of Officer thereof.

13. By reason of the aforesaid provisions, Congress is vested with paramount power to fix and determine the maritime law, and where Congress has not enacted legislation, the Federal Judiciary has the power to define the general maritime law which is to prevail throughout the United States. Congress has in fact enacted a comprehensive and detailed body of statutes relating to marine oil pollution and regulations have been duly issued by Federal agencies thereunder.

14. In view of the need for a nationally uniform maritime law recognized by the Constitutional grant, power to enact legislation such as the Florida Act does not exist in the States and is not delegable to them by the Congress.

15. Contrary to the aforesaid provisions of the Consti-

tution, the Legislature of the State of Florida has nevertheless enacted the Florida Oil Spill/Prevention and Pollution Control Act (Chapter 70-244 of the Laws of the State of Florida), and the Florida Department of Natural Resources has published Regulations thereunder.

16. The Florida Act and Regulations purport, among other things:

a. To require the establishment of evidence of financial responsibility in respect of vessels carrying certain cargoes to Florida ports, on pain of withholding permission from said vessels to enter Florida ports;

b. To require the maintenance on board vessels carrying certain cargoes of such containment gear as may be required by the Florida Department of Natural Resources, with a crew trained in the use of such gear;

c. To set up standards of liability for the maritime tort of marine pollution differing from those of the general maritime law and applicable federal statutes and to impose absolute liability, regardless of fault, for damages resulting from discharges of oil and other substances from vessels;

d. To deny to owners of vessels the right to limit their liability for damage resulting from such discharges; and

e. To require a grant of permission of the particular agency of the State of Florida having jurisdiction thereof in order for any person to deal with derelict vessels, and to empower the State on its own initiative to control the disposition to be made of certain derelict vessels.

f. To deprive the United States District Courts of the cognizance of all cases of admiralty and maritime jurisdiction which they have by virtue of the Admiralty Clause of the Constitution (Article III, Section 2, Clause 3) and Title 28, U.S.C. § 1333, and instead to vest in the Florida Department of Natural Resources the exclusive power to determine liability for marine pollution damages, purporting to give to the said Department the absolute discretion to confer as a privilege, and not as a right, a waiver of liability for reimbursement for such

damages if it finds, after hearing, that the occurrence giving rise thereto was the result of an act of war, act of Government, act of God, or an act or omission of a third party.

g. To empower the Florida Department of Natural Resources to adopt, amend, repeal and enforce regulations relating to oil spills or discharges, or the spills or discharges of other pollutants into the waters of Florida, or onto the coasts of that State, covering, among other things, operation and inspection requirements for vessels; procedures and methods of reporting discharges and other occurrences which the Florida Act purports to prohibit; procedures, methods, means and equipment to be used in the removal of pollutants; requirements for minimum weather and sea conditions for permitting vessels to enter ports and for the safety and operation of vessels, and requiring that, prior to being granted entry into any port of Florida, the Master must report any discharges of oil or other pollutants his vessel has had since leaving her last port, any mechanical problem creating the possibility of a spill, and any denial of entry into any port during the vessels current voyage.

17. The Florida Act and Regulations, insofar as they deal with the aforesaid matters and others similar thereto, are null, void and of no effect, by reason of the Constitutional reservation to the Congress of the paramount power to enact legislation governing the movement of vessels in waters within the admiralty and maritime jurisdiction of the United States, particularly when engaged in international or interstate commerce, and the power of the Federal Judiciary to define the maritime law which, in the absence of Congressional legislation, is to prevail throughout the United States.

AS AND FOR A SECOND CAUSE OF ACTION:

18. The Constitution provides, in Article I, Section 8, Clause 3, that the Congress shall have power to regulate commerce with foreign nations and among the several States.

19. Pursuant to such constitutional authority, the Congress has enacted a comprehensive and detailed body of statutes, and Federal regulations have been duly issued pursuant to certain of those and other federal statutes.

20. The aforesaid federal statutes and regulations provide, among other things:

a. For a national policy for the prevention, control and abatement of water pollution.

b. For the prohibition of discharges of oil into or upon the navigable waters of the United States, their adjacent shorelines, or the waters of the contiguous zone in harmful quantities, consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards;

c. For the definition of "harmful discharge" by Presidential Regulation;

d. For fines and/or imprisonment of persons in charge of vessels, or on- or offshore facilities, who fail to notify the appropriate agency of the Federal Government in case of harmful discharges from their vessels or facilities, or who knowingly allow such harmful discharges;

e. For promulgation of a National Contingency Plan for the removal of oil discharges;

f. For radical emergency measures, including destruction of vessels discharging or about to discharge large quantities of oil in or upon the navigable waters of the United States;

g. For action by United States Attorneys to abate actual or threatened discharges of oil imposing imminent and substantial threats to the public health or welfare of the United States;

h. For standards of proof by which owners or operators of vessels shall be found liable for discharges of oil, the amount of potential liability therefor, and the procedure for recovery of the cost of removal;

i. For standards of proof which owners or operators of vessels must meet in order to establish liability of third parties for discharges;

j. For preservation of vessel owners' or operators'

rights against third parties;

k. For recovery by vessell owners or operators, in proper cases, of the cost of removing discharged oil;

l. For the issuance by the President of rules and regulations consistent with the National Contingency Plan;

m. For civil penalties for failure to comply with said regulations;

n. For the establishment and maintenance by owners or operators of vessels of evidence of financial responsibility to meet potential liabilities for the cost of removal of oil discharges with the right of direct legal action against insurers or other persons providing such evidence of financial responsibility;

o. For cooperation by all federal agencies in complying with applicable water quality standards; and

p. For preventing the obstruction of navigable waters by disabled vessels, and for marking and removing vessels moored, wrecked or sunk so as to form such obstructions.

21. The aforesaid federal statutory provisions, together with the general maritime law, applicable to the plaintiff members of the Institute and of the Associations while their vessels engage in interstate or international maritime commerce with ports of Florida and other ports of the United States, and controlling the liabilities of said members from time to time arising, in respect of which certain of plaintiff Associations are by contract with their respective members required to provide indemnity, regulate commerce with foreign nations and among the several States.

22. Contrary to the aforesaid Constitutional and statutory provisions, the State of Florida has nevertheless enacted the Florida Oil Spill/Prevention and Pollution Control Act (Chapter 70-244 of the Laws of the State of Florida), and has published Regulations thereunder.

23. The aforesaid Intervening Plaintiffs repeat and reallege each and every allegation contained in Paragraph "16" of this complaint, with the same force and effect as herein set forth at length.

24. The Florida Act and Regulations purport to impose other and multiplicitous requirements, standards, penalties and duties in addition to and/or duplicative of those previously contained in federal statutes and regulations.

25. The Florida Act and regulations impose unreasonable burdens upon international and interstate maritime commerce, and are therefore null, void and of no effect under the Commerce Clause of the Constitution.

AS AND FOR A THIRD CAUSE OF ACTION:

26. The Constitution provides, in Article VI, Clause 2, that the Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the Supreme Law of the Land; and that the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

27. The aforesaid Intervening Plaintiffs repeat and reallege each and every allegation contained in Paragraphs "19" and "20" of this complaint with the same force and effect as if herein set forth at length.

28. These aforesaid statutes, and the regulations issued thereunder, leave no room for duplicative state legislation. Further, the federal interest in the field of foreign maritime commerce is so dominant, and the need for uniformity so great in view of the immense potential for commercial disruption implicit in the possible enactment of twenty-nine differing and/or contradictory state regulatory schemes by the coastal States (Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hanpshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington and Wisconsin), that the federal statutes and regulations already governing the movement of vessels in international and interstate maritime commerce must be seen as fully occupying the field, to the exclusion of disparate and burdensome state regulatory schemes allegedly operating in the same field, on the same

persons, for the same ends.

29. Existing federal legislation and regulations governing the movement of vessels in international and interstate maritime commerce preempt that legislative field as the Supreme Law of the Land, pursuant to Article VI, Clause 2 of the Constitution, wherefore the Florida Act and regulations, insofar as they impinge on that field, are null, void and of no effect.

AS AND FOR A FOURTH CAUSE OF ACTION:

30. The Constitution provides, in the Fifth Amendment thereto, that no person shall be deprived of property without due process of law; and, in the Fourteenth Amendment thereto, that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

31. The aforesaid Intervening Plaintiffs repeat and reallege each and every allegation contained in Paragraph "16" of this complaint with the same force and effect as if herein set forth at length.

32. The Florida Act and Regulations further purport to provide for a civil penalty of not more than $50,000 for each day any violation of the provisions of the Florida Act or Regulations is found to continue; to remove from state and federal courts altogether jurisdiction to hear and determine questions relating to liability for civil penalties, costs of removal and damages in respect of marine oil pollution; and to create a rule of absolute liability, operating only in favor of the State of Florida and other pollution damage plaintiffs but not in favor of innocent vessel owners or operators as third-party plaintiffs, where a discharge is caused by negligent or willful acts of third party defendants, with the result that such innocent owners or operators would, if the Florida Act and Regulations were upheld, be required to respond to the State of Florida and other pollution damage plaintiffs for such pollution damage, with no remedy against the culpable parties.

33. Said provisions, with others to be briefed to this

Honorable Court, have no reasonable basis in law or fact to support their arbitrary disruption and/or deprivation of intervening plaintiffs' trade and property rights.

34. Said provisions bear no reasonable relation to the goals sought to be achieved by the Florida Act, and discriminate arbitrarily between the State of Florida and other pollution claimants, on the one hand and personal injury, collision and other maritime claimants, on the other hand.

35. Said provisions deprive Intervening Plaintiffs of trade and property rights without due process or equal protection of the law and are therefore null, void and of no effect under the fifth and Fourteenth Amendments to the Constitution.

WHEREFORE, Intervening Plaintiffs the American Institute of Merchant Shipping, Assuranceforeningen Gard, *et al.* respectfully pray that this Honorable Court will hand down its judgment:

a. Declaring the Oil Spill Prevention and Pollution Control Act (Chapter 70-244 of the Laws of the State of Florida) null, void, and of no effect as said Act purports to bear on the movement of vessels engaged in maritime commerce, by reason of the unconstitutionality of said Act;

b. Permanently enjoining defendants in their official capacities, and all others who may thereafter succeed to said official capacities, from maintaining, upholding, implementing and/or enforcing any provision of said Act, or any Regulations issued thereunder, as said Act purports to bear on the movement of vessels engaged in maritime commerce; and

c. Granting such further, other or different relief as to this Honorable Court may appear just in the cause.

Yours, etc.,

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212-WH 3-3980

Attorneys for Intervening Plaintiffs
American Institute of Merchant
Shipping, Assuranceforeningen Gard,
et al.,

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

THE AMERICAN WATERWAYS OPERATORS, INC., et al.,
PLAINTIFFS,

and

SUWANNEE STEAMSHIP CO., et al., and their respective members,
INTERVENING PLAINTIFFS,

vs.

REUBIN O'D, ASKEW et al.,
DEFENDANTS.

ANSWER TO PLAINTIFFS' COMPLAINT

Defendants answer Plaintiffs' complaint and state:

1. Defendants are without knowledge of assertions of paragraph 1 of the Complaint and neither affirm nor deny same.

2. Defendants deny paragraph 2 of the Complaint.

3. Defendants are without knowledge of assertions of paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of the Complaint and neither affirm nor deny same.

4. Defendants admit allegations of paragraph 19 and 20 of the complaint.

5. Defendants admit allegations of paragraph 21 of the Complaint.

6. Defendants deny allegations of paragraph 22 of the Complaint.

7. Defendants deny the 8th sentence of paragraph 23 of said Complaint.

8. Defendants deny allegations of paragraph 24 of the Complaint.

9. Defendants deny allegations of paragraph 25 of the Complaint.

10. Defendants deny allegations of paragraph 25 (a) of the

Complaint.

11. Defendants deny allegations of paragraph 25 (b) of the Complaint.

12. Defendants are without knowledge of allegations of paragraphs 25 (c) and 25 (d) of the Complaint and neither affirm nor deny same.

13. Defendants deny allegations of paragraph 25 (e) of the Complaint.

14. Defendants are without knowledge of assertions of paragraph 26 beginning on page 11 of the Complaint (mistakenly numbered "25").

15. Defendants deny allegations of paragraph "26" of the Complaint.

16. Defendants deny allegations of paragraph "27" of the Complaint.

17. Defendants deny allegations of paragraph "28" of the Complaint.

18. Defendants deny allegations of paragraph "29" of the Complaint.

19. Defendants deny allegations of paragraph "30" and of each and every sub-paragraph thereof of the Complaint.

20. Defendants deny allegation of paragraph "31" of the complaint.

WHEREFORE, Defendants pray that this Court dismiss Plaintiffs' Complaint with prejudice with costs assessable against Plaintiffs.

ANSWER TO COMPLAINT OF INTERVENORS SUWANNEE STEAMSHIP CO., COMMODORES POINT TERMINAL CORPORATION, AND AMERICAN INSTITUTE OF MERCHANT SHIPPING, et al.

Defendants answer the Complaint of these Intervenors (hereinafter referred to as "Suwannee Complaint") and state:

21. Defendants are without knowledge of assertions of paragraph 1 of the Suwannee Complaint and neither admit nor deny same.

22. Defendants are without knowledge of assertions of paragraph 2 of the Suwannee Complaint and neither admit

nor deny same.

23. Defendants admit paragraphs 3, 4, and 5 of the Suwannee Complaint.

24. Defendants deny allegations of paragraph 6 of the Suwannee Complaint.

25. Defendants deny assertions of paragraph 7 and each and every subparagraph thereof of the Suwannee Complaint.

WHEREFORE, Defendants pray this Court to dismiss the Suwannee Complaint with prejudice with costs assessable against these Intervenors.

ANSWER TO COMPLAINT OF INTERVENORS AMERICAN INSTITUTE OF MERCHANT SHIPPING, et al.

Defendants answer the Complaint of these Intervenors (hereinafter referred to as "Institute Complaint") and state:

26. Defendants are without knowledge of assertions of pargaraph 1 through 8, inclusive, of the Institute Complaint and neither admit nor deny same.

27. Defendants admit allegations of paragraphs 9 and 10 of the Institute Complaint.

28. As to paragraph 11 of the Institute Complaint, Defendants admit that this Court has jurisdiction, but deny appropriateness of the specific constitutional provisions set forth therein.

29. Defendants admit allegations of paragraph 12 of the Institute Complaint.

30. Defendants admit the first sentence of paragraph 13 of the Institute Complaint, but deny allegations in the second sentence thereof to the extent that the ***Federal Act*** referred to is asserted to be of such a comprehensive nature as to foreclose state legislation in the field of marine oil-spill pollution control.

31. Defendants deny allegations of paragraph 14 of the Institute Complaint.

32. Defendants deny paragraph 15 of the Institute Complaint insofar as it asserts that the Florida Act is contrary to the Constitution.

33. Defendants admit paragraphs 16 a and 16 b of the

Institute Complaint.

34. Defendants deny paragraph 16 c of the Institute Complaint insofar as it purports to limit pollution of state waters to the category of a maritime tort.

35. Defendants admit paragraph 16 d of the Institute Complaint.

36. Defendants deny paragraph 16 e of the Institute Complaint.

37. Defendants deny paragraph 16 f of the Institute Complaint.

38. Defendants admit allegations of paragraph 16 g of the Institute Complaint.

39. Defendants deny allegations of paragraph 17 of the Institute Complaint.

40. Defendants admit paragraph 18 of the Institute Complaint.

41. Defendants deny allegations of paragraph 19 insofar as they assert the *Federal Act* to be so comprehensive as to foreclose the State from legislating in the field of oil-spill pollution control.

42. Defendants are without knowledge of and therefore neither admit nor deny allegations related to the *Federal Act* contained in paragraph 20 and all subdivisions thereof, except insofar as such allegations attempt to assert or may be interpreted as asserting Federal preemption in the field of oil-spill pollution control.

43. Defendants deny assertions of paragraph 21 of the Institute Complaint insofar as it purports to allege that the *Federal Act* controls liability of plaintiffs while in Florida waters, and that the *Federal Act* regulates commerce with foreign nations and between the several states.

44. Defendants deny assertions of paragraph 22 of the Institute Complaint insofar as it alleges the Florida Act to be contrary to the Constitution.

45. As to paragraph 23 of the Institute Complaint, Defendants repeat their response to paragraph 16 and all subparagraphs thereof, which response is contained in Answer paragraphs 33 through 38, inclusive, hereinabove set out.

46. Defendants deny paragraphs 24 and 25 of the Institute

Complaint.

47. Defendants admit paragraph 26 of the Institute Complaint.

48. As to paragraph 27 of the Institute Complaint, Defendants repeat their responses to paragraphs 19 and 20 and all subparagraphs thereof contained in Answer paragraphs 41 and 42 hereinabove set out.

49. Defendants deny the allegations of paragraphs 28 and 29 of the Institute Complaint.

50. Defendants admit paragraph 30 of the Institute Complaint.

51. As to paragraph 31 of the Institute Complaint, Defendants repeat their response to paragraph 16 and all subparagraphs thereof which response is contained in Answer paragraphs 33 through 38, inclusive, hereinabove set out.

52. Defendants deny allegations of paragraphs 32 through 35, inclusive, of the Institute Complaint.

WHEREFORE, Defendants pray the Court to dismiss the Institute Complaint with prejudice with costs assessable to these Intervenors.

COUNTERCLAIM

1. This counterclaim is for treble damages and injunctive relief arising under the antitrust laws of the United States. 15 U.S.C. § 1, *et seq.*

2. Counterclaimant, the State of Florida (hereinafter the "State"), is a sovereign state of the United States, and has sustained and will sustain damages as a result of the combination and conspiracy in violation of the antitrust laws herein alleged. The sovereign power of the State is invoked by Defendant/Counterclaimant Robert L. Shevin as Attorney General of the State of Florida.

3. Counterclaimant also brings this action in its capacity as *parens patriae*, trustee, guardian and representative on behalf of the people of the State in that it has an obligation to maintain, protect and promote the health and welfare of its people.

4. The damage and injury done to the people of the State

as a result of the combination and conspiracy alleged herein transcends the injury sustained by them individually, and adversely affects the economy and prosperity of the State and the health and welfare of its citizens.

5. Counterclaimant also brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, as representative of the class consisting of all public and private entities and persons injured and likely to be injured by the effects of the combination and conspiracy herein alleged. Said members of the class are so numerous that joinder of all members is impracticable. The rights of the members of the class involve common questions of law and fact. The claims of the counterclaimant are typical to those of the class. Counterclaimant will fairly and adequately protect the interests of the class. The questions of law and fact common to members of the class predominate over any questions affecting only individual members. This class action is superior to other methods for fair and efficient adjudication of the controversy herein described.

6. This counterclaim is brought against the following named associations and each of their respective members, all of whom have intervened as parties plaintiff in this cause:

AMERICAN INSTITUTE OF MERCHANT SHIPPING, ASSURANCEFORENINGEN GARD, ASSURANCE-FORENINGEN SKULD, THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION, LIMITED, THE JAPAN SHIP OWNERS MUTUAL PROTECTING AND INDEMNITY ASSOCIATION, THE LIVERPOOL AND LONDON STEAM SHIP PROTECTION AND INDEMNITY ASSOCIATION, LIMITED, THE LONDON STEAMSHIP OWNERS' MUTUAL INSURANCE ASSOCIATION LIMITED, NEWCASTLE PROTECTION AND INDEMNITY ASSOCIATION, THE NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCIATION LIMITED, THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION LIMITED, THE STANDARD STEAMSHIP OWNERS' PROTECTION & INDEMNITY ASSOCIATION (BERMUDA) LIMITED, THE STEAMSHIP

MUTUAL UNDERWRITING ASSOCIATION, LIMITED, SUNDERLAND STEAMSHIP PROTECTING & INDEMNITY ASSOCIATION, SVERIGES ANGFARTYGS ASSURANSFORENING, THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED, THE WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG), and their respective members.

The above-named counterclaim defendant denominated American Institute of Merchant Shipping is the national trade association of the American Steamship industry. Other of the above-named counterclaim defendants, commonly known as "P and I Clubs," are British, Japanese, Norwegian, Swedish, Bermudian and Luxembourgian associations.

7. Each of the counterclaim defendants is found or transacts business in the Middle District of Florida, the unlawful activities done pursuant to the combination and conspiracy herein alleged were carried out, in part, within the Middle District of Florida, and the interstate and foreign trade and commerce hereinafter described is carried on in part within the Middle District of Florida.

CO-CONSPIRATORS

8. Various other persons, firms, and corporations not made counterclaim defendants herein have participated as co-conspirators with the counterclaim defendants in the offense charged in this complaint and have performed acts and made statements in furtherance thereof.

NATURE OF TRADE AND COMMERCE

9. The carriage of goods by water is an integral and important part of the interstate and foreign commerce of the United States and State of Florida. In 1969, waterborne exports from the United States amounted to approximately $20 billion and waterborne imports amounted to approximately $21.6 billion. The waterborne exports of products

from and imports to Florida ports are of substantial significance to the trade of individual businesses and to the general economy of the state. For example, in 1968 imports and exports from major Florida ports amounted to the following:

	Thousands of Short Tons	
	Imports	Exports
Jacksonville Harbor	3,650	1,540
Port Everglade Harbor	2,205	206
Miami Harbor	1,298	302
Tampa Harbor	2,050	10,525

Waterborne coastal trade is also significant to the above ports. In 1968, shipments and receipts for major Florida ports were as follows:

	Thousands of Short Tons	
	Receipts	Shipments
Jacksonville Harbor	3,854	515
Port Everglades Harbor	5,306	262
Miami Harbor	315	183
Tampa Harbor	10,463	3,383

10. Petroleum and petroleum products are of vital importance to the economy of the United States and the State of Florida particularly for fuel purposes. In 1968, consumption of petroleum and petroleum products in the United States amounted to about 24,880 trillion British Thermal Units or about 39.5% of all mineral energy and electricity consumption. However, the United States has for more than a decade produced less than its needs of petroleum and has been a net importer of petroleum and petroleum products. In 1968 U.S. production of petroleum and petroleum products amounted to about 19,510 trillion British Termal Units. In 1968, U. S. imports of crude petroleum were 472 million barrels and imports of refined products were 567 million barrels, while exports were two million barrels of crude and 83 million barrels of refined. Accordingly, petroleum imports are vital for the functioning of the economy.

11. The counterclaim defendant P and I clubs are mutual associations formed by shipowners in order to provide themselves with Marine Protection and Indemnity Insurance on the indemnity principle. The associations, being fully mutual, represent the interests of their individual shipowner members equally with the interests of the associations themselves. Collectively, they insure approximately three quarters of the world's ocean-going vessel tonnage against liabilities arising out of the operation of their members' vessels, including oil pollution liabilities. The counterclaim defendant American Institute of Merchant shipping is composed of 35 United States companies which own and operate about 520 U.S.-flag, ocean-going vessels of all types, engaged in the domestic and foreign trades. Accordingly, the operations of the members of the American Institute of Merchant Shipping and the P and I clubs represent a significant factor in the foreign and interstate waterborne commerce described above, and in the importing of oil to the United States and State of Florida.

CONSPIRACY CHARGED

12. Beginning at least as early as 1970 and continuing thereafter up to and including the date of the filing of this counterclaim, counterclaim defendants and their co-conspirators have been engaged in a combination and conspiracy in restraint of foreign and interstate trade and commerce in shipping, the carriage of waterborne freight and the insurance and reinsurance of ships and shipping in violation of the anti-trust laws of the United States, 15 U.S.C. § 1 *et seq.*

13. Said combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among counterclaim defendants and their co-conspirators, the substantial terms of which have been:

(a) To threaten to impair, lessen or halt the voyages of ships to the ports of Florida.

(b) To halt the voyages of ships bound for Florida ports, and to divert ships bound for Florida ports to

other ports.

(c) To refuse to provide insurance and reinsurance covering ships bound for Florida ports.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, counterclaim defendants and their co-conspirators have:

(a) Publicly announced that under stated conditions there would be no future sailings to Florida ports, including public announcements made during the course of hearings in this cause;

(b) Diverted ships bound for Florida ports to ports outside the state;

(c) Publicly announced their refusal to provide insurance for ships bound for Florida ports, and refused to provide such insurance.

EFFECTS

15. The aforesaid combination and conspiracy has had, among other things, the following effects:

(a) Ships bound for Florida ports have been diverted to other ports;

(b) Shipments required by importers have been delayed and had to be shipped overland at greater expense from ports outside the State of Florida;

(c) Florida port authority fees have been lost.

(d) The free flow of interstate and foreign trade and commerce by water carrier has been impeded.

16. By reason of the foregoing, the state and other members of the counterclaimant class have been and will continue to be injured in their respective businesses and property in an amount not yet ascertained. The conspiracy and combination herein alleged has resulted in a continuing course of conduct by the counterclaim defendants, the effect of which has been and will continue to be to increase the injury to the State and other members of the counterclaimant class while such course of conduct continues, and counterclaimant hereby seeks leave of the Court to amend or

supplement this counterclaim from time to time to specify the injury to business and property which shall have been incurred.

PRAYER

WHEREFORE, counterclaimant prays:

1. That the Court adjudge and decree that counterclaim defendants, and each of them, have engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act.

2. That the State and other members of the counterclaim class recover threefold the damages determined to have been sustained by each of them respectively, and that joint and several judgments be entered herein against counterclaim defendants, and each of them, for the amounts determined.

3. That each of the counterclaim defendants, its successors, assignees, subsidiaries, and transferees, and the respective officers, directors, agents and employees, and all other persons action or claiming to act on behalf thereof or in concert therewith be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the aforesaid combination and conspiracy and from engaging in any other combination, conspiracy, agreement, understanding, or concert of action, adopting or following any practice, plan, program, or design having a similar purpose or effect.

4. That this Court grant such other, further, and different relief as may be deemed just and proper.

5. That counterclaimant and members of the class recover the costs of this suit, together with a reasonable attorney's fee.

ROBERT L. SHEVIN
Attorney General

/s/DANIEL S. DEARING
Chief Trial Counsel

Attorneys for Defendants
and Counterclaimants
The Capitol
Department of Legal Affairs
Tallahassee, Florida 32304

(Certificate of service omitted in printing)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 71-156-Civ-J

THE AMERICAN WATERWAYS OPERATIONS, INC., et al.,
PLAINTIFFS

and

SUWANNEE STEAMSHIP CO., et al.,
INTERVENING PLAINTIFFS,

vs.

REUBIN O'D. ASKEW, et al.
DEFENDANTS

MEMORANDUM OPINION AND FINAL JUDGMENT

Before, RONEY, Circuit Judge, and SCOTT and TJOFLAT, District Judges.

TJOFLAT, District Judge:

During the 1970 session the Florida Legislature passed the "Oil Spill Prevention and Pollution Control Act"[1] (hereinafter called the "Florida Act") in an attempt to prevent pollution by the shipping industry of waters within the territorial jurisdiction of the State of Florida. The Act imposes unlimited liability without fault upon virtually any vessel which discharges oil or any other pollutant while destined for or leaving any Florida port.[2] Onshore and offshore terminal facilities are subject to the same liability.[3] The Act requires every owner or operator of a vessel using a Florida port or a terminal facility to pay

whatever clean up costs or damages may result from the discharge of pollutants[4] and to maintain satisfactory evidence of financial responsibility to satisfy such liability.[5] The Department of Natural Resources is empowered to require any vessel transporting a pollutant in state waters to be equipped with specified containment gear and a crew trained in its use.[6] Prior to entering a Florida port, every vessel is subject to inspection by the port manager to determine the presence of the required containment gear and the seaworthiness of the ship.[7] He is required to notify all other ports in the state of any vessel refused entry to his port.[8]

Plaintiffs and intervenors include merchant shippers whose vessels use Florida ports in the course of transporting goods in foreign and interstate commerce; world shipping associations who insure three-fourths of the ocean-going tonnage against, among other things, liability for oil spillage; a substantial portion of the barge and towing industry operating along the Florida coast; and owners of oil terminal facilities located in Florida ports. They have challenged the validity of the Florida Act on several federal constitutional grounds. Plaintiffs' initial contention is that Florida has sought to legislate substantive maritime law which, under the United States Constitution, is exclusively within the federal domain. Secondly, they contend that the Act violates the Commerce Clause, since it seeks to regulate foreign and interstate commerce. Certain provisions of the Act are under piecemeal attack on Fourteenth Amendment due process and equal protection grounds. The resolution of the first of these contentions dictates the decision in this case, and the others will not be discussed.

The maritime law of the United States has evolved under Article 3, and Section 2, of the Constitution which extends the judicial power of the United States "to all Cases of admiralty and maritime jurisdiction." In a territorial sense that jurisdiction covers all waters navigable in interstate or foreign commerce, including state waters.[9] Maritime law governs virtually every facet of the shipping industry from the design and construction of vessels to the regulation of their day to day operations and the transactions in which they

engage. It comprises traditional admiralty rules and concepts found initially in the European authorities. These rules and concepts have been augmented from time to time by the federal judiciary to accommodate needs distinctive to this nation. Further changes in the corpus of maritime law have been effected by a variety of congressional enactments and administrative regulations.[10] One of these congressional enactments is the Water Quality Improvement Act of 1970[11] (hereinafter called "W.Q.I.A.") which became law a few months prior to the effective date of the Florida Act. W.Q.I.A. provides plaintiffs with tangible evidence that the Florida Act is an unconstitutional intrusion into the federal maritime domain.

The W.Q.I.A. reinforces the national anti-water pollution policy. In this act Congress declared that there should be no discharge of oil into or upon the navigable waters and shorelines of the United States.[12] The owner or operator of a vessel or an onshore or offshore facility is subject to limited liability without fault for the costs expended by the government in cleaning up an oil spill.[13] Where the spillage results from willful negligence or misconduct, however, liability for such costs can be unlimited.[14] Evidence of financial responsibility sufficient to cover its potential liability must be given by any vessel of 300 gross tons or more that uses the navigable waters of the United States.[15] Additionally, the President is authorized to issue regulations requiring, among other things, that vessels maintain oil spill prevention equipment and be subject to boarding for inspection purposes at any time.[16]

In adopting W.Q.I.A. Congress anticipated that all hazardous substances, in addition to oil, capable of polluting navigable waters would be subject to similar legislative treatment.[17] W.Q.I.A. required the President to promulgate regulations defining such hazardous substances and establishing methods and means for their removal.[18] He was also required to report to Congress, by November 1, 1970, on the desirability of enacting legislation to establish liability for the cost of removing hazardous substances discharged from vessels and onshore and offshore facilities.[19]

That the Florida Act constituted unlawful intrusion into the exclusive federal admiralty domain is apparent when one observes the extent to which that act would change substantive maritime law. The most obvious changes would be in the liability now imposed by W.Q.I.A. and maritime rules on shippers and the operators of onshore and offshore facilities.

While both W.Q.I.A. and the Florida Act subject vessels and onshore and offshore facilities to strict liability for cleanup costs, the latter imposes a far greater measure of responsibility. For example, W.Q.I.A. would excuse a shipper who demonstrates that the oil spill was caused by act of God, an act of war, or the act or omission of a third party.[20] The Florida Act recognizes none of these defenses to a claim by the state for cleanup costs. The state is entitled to judgment simply by pleading and proving "the fact of the prohibited discharge."[21] Moreover, the amount of the recovery would be unlimited; whereas W.Q.I.A. would place a limit on exposure, as we have previously noted.[22]

There is perhaps an even greater contrast between maritime law and the Florida Act in compensating state or private interests for property damage, as distinguished from cleanup costs. W.Q.I.A creates responsibility for cleanup costs only and leaves undisturbed the remedies available under maritime law for private injury caused by oil spillage or other pollution. The federal courts have long considered oil pollution as a maritime tort for which damages may be awarded.[23] Compensation is recoverable for injury to property and allowances have even been made for consequential damages. In *In re New Jersey Barging Corp.*,[24] an oil spill case, the court approved the following language from the Commissioner's report:

> In the light of the . . . authorities, it would seem to the Commissioner that he is authorized, and in fact required, to make award of compensation for such annoyance, inconvenience and discomfort suffered by particular claimants to the extent of and in an amount commensurate with the annoyance and discomfort proven.

The recovery of damages in such cases is predicated on proof of negligence or unseaworthiness. The owner of a

seaworthy vessel would not be liable, for example, if he encountered an extraordinary peril which resulted in a non-deliberate and non-negligent pollution of the shoreline. Even if fault was established, the vessel owner's financial responsibility for property damage would be limited to the value of the vessel at the end of the voyage, plus the "freight then pending," unless the damage was caused with the owner's privity or knowledge."[25]

Under the Florida Act, however, liability without fault is the foundation for "damage incurred by the state and for damage resulting from injury to others," just as it is in the case of cleanup costs. By substituting absolute liability for proof of negligence or unseaworthiness as a condition to unlimited recovery, the Florida Act, if valid, would materially change the substantive maritime law governing the disposition of claims arising from the pollution of coastal waters.

It is well settled that state legislation is invalid where it is in contravention with general admiralty rules or congressional enactments in the maritime field. In the landmark *Jensen* case,[26] the Supreme Court, in holding that the New York State Workmen's Compensation Statute could not constitutionally be applied where an accidental death occurred on a vessel afloat in navigable waters within New York's boundaries, said:

> And plainly, we think, no such legislation is valid if it contravenes the essential purpose expressed by act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself.[27]

* * *

If New York can subject foreign ships coming into her ports to such obligations as those imposed by her

Compensation Statute, other States may do likewise. The necessary consequence would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded .... The legislature exceeded its authority in attempting to extend the statute under consideration to conditions like those here disclosed. So applied, it conflicts with the Constitution and to that extent is invalid.[28]

The Florida Act here constitutes a far greater intrusion into the federal maritime domain than the New York statute in the *Jensen* case. If applied to the plaintiffs and intervenors in this case, the Florida Act would effect– in the words of *Jensen*– the "destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded."

This is not a situation in which a state legislature has sought to act in an area of purely local concern and its enactment is no real encroachment on federal interests. Rather, this is a case where the State purports to impose upon shipping and related industries duties which under the federal law they do not bear. It can hardly be said that Florida is not seeking to regulate conduct in the federal maritime jurisdiction. We need not belabor the point that to permit the states severally to regulate these industries as Florida seeks to do would sound the death knell to the principle of uniformity.

Defendants argue that, to the extent the Florida Act goes beyond W.Q.I.A., it fill (sic) a "void" in the maritime law and is justifiable under the "gap theory."[29] This theory presupposes that maritime law is an incomplete system, with numerous gaps that can be filled by state statutes. This is to say, if the maritime law affords no remedy, the states may provide one. The Supreme Court's recent decision in *Moragne v. States Marine Lines, Inc.*[30] clearly puts such a theory to rest.

In that case the Court had before it the question of the applicability of the Florida Wrongful Death Statute[31] to a claim arising out of the death of a longshoreman killed while working aboard a vessel in navigable waters within the State of Florida. Neither the general maritime law nor Congressional enactment provided a remedy in the situation. The District Court and the Court of Appeals, citing *The Tungus v. Skovgaard*,[32] held that the state statute should be invoked to provide the remedy as well as the basis for recovery, that is, negligence.

Under maritime law, however, States Marine Lines owed plaintiff's decedent the duty to provide a seaworthy vessel in addition to the duty to exercise due care. Plaintiff therefore argued that an action was maintainable for a breach of either duty.

The Supreme Court rejected the notion that the absence of a federal statute or a maritime rule on the subject compelled the conclusion that state law must govern. It held that admiralty was fully capable of fashioning a remedy for the breach of substantive duties imposed by general maritime law and thus directed the district court to shape the remedy on remand. At the same time the Court observed that the Florida law of negligence has no place in the maritime field. The decision clearly reinforced the policy of uniformity and is an indication that admiralty cannot tolerate the inconsistency inherent in accommodating state remedial statutes to exclusively maritime substantive concepts.

Another argument advanced by defendants is that the Florida Act is valid under the following provision of W.Q.I.A:

> Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement of liability with respect to the discharge of oil into any waters within such State. 33 U.S.C. § 1161(o) (2).

It has long been recognized that Congress is powerless to confer on the states authority to legislate within the admiralty jurisdiction [*Knickerbocker Ice Company v. Stewart*, 253 U.S. 149 (1920);[33] *The Lottawanna*, 21 Wall. 558 (1875); *The Steamer St. Lawrence*, 1 Bl. 522 (1862)] and we cannot

presume that W.Q.I.A. was an attempt to do so. There is nothing in the language of the act which purports to grant any such legislative authority to the states. The statement that Congress did not intend to preclude state imposed liability for oil pollution simply means that the states are free to enforce pollution control measures that are within their constitutional prerogative.

For the foregoing reasons we conclude that the Florida Act in question cannot constitutionally be applied to the plaintiffs and intervenors and to the activities in which they engage. The question thus arises as to whether the Act is severable. Although it contains a severability clause,[34] such a provision is by no means binding on a court empowered to determine the constitutionality of a statute. The rule was explained by the Supreme Court in *Carter v. Carter Coal Co.*:

> Whether the provisions of a statute are so interwoven that one being held invalid the others must fall, presents a question of a statutory construction and of legislative intent, to the determination of which the statutory provision becomes an aid. "But it is a aid merely; not an inexorable command." *Dorchy v. Kansas*, 264 U.S. 286, 290. The presumption in favor [of] separability does not authorize the Court to give the statute "an effect altogether different from that sought by the measure viewed as a whole." *Railroad Retirement Bd. v. Alton R. Co.*, 295 U.S. 330, 362.
>
> The statutory aid to construction in no way alters the rule that in order to hold one part of a statute unconstitutional and uphold another part as separable, they must not be mutually dependent upon one another.

When a federal court is called upon to rule on the constitutionality of a state statute containing a severability clause, the court will look to the decisions of the state court on the effect of such a clause.[36] In *Cramp v. Board of Public Instruction*[37] the Supreme Court of Florida made the following pronouncement on the question of severability:

> The rule is well established that the unconstitutionality of a portion of a statute will not necessarily condemn

> the entire act. When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.[38]

In the Florida Act there are no provisions which, though standing by themselves might be considered unobjectionable, are not so interwoven in purpose and scheme with the invalid provisions of the Act as to permit the operation of the severability clause. The announced intent of the Florida Legislature was to "deal with the hazards and threats of danger and damage posed by .... transfer of pollutants between vessels, between onshore facilities and vessels, and between offshore facilities and vessels within the jurisdiction of the state and state waters ...."[39] Each provision of this statute was enacted to realize this intent and each would affect the industries in which plaintiffs and intervenors engage. The provisions that do not directly frustrate the federal maritime law are so few that, considered together, they would not comprise a coherent legislative scheme. Accordingly, the Act in its entirety must fall.

In consideration of the foregoing, it is

ORDERED:

1. Chapter 70-244, Laws of Florida, as amended in Chapter 376, Florida Statutes Annotated, is hereby declared to be in violation of Article III, Section 2, Clause 3 of the Constitution of the United States and is therfore null and void and without effect.

2. The temporary restraining order entered by Judge Charles R. Scott on March 19, 1971, enjoining the enforcement of said chapter and any regulations promulgated thereunder is hereby made permanent; provided that nothing in this final judgment whall be construed to prohibit the

defendants from continuing to pay salaries of current employees out of the Coastal Protection Trust Fund.

3. This memorandum opinion and final judgment shall constitute the final judgment of this Court as to all issues presented in this action.

DONE AND ORDERED at Jacksonville, Florida, this 10th day of December, 1971.

/s/ Gerald Bard Tjoflat
UNITED STATES DISTRICT JUDGE

FOR THE COURT

FOOTNOTES

1. Chapter 376, Florida Statutes Annotated; Chapter 70-244, Laws of Florida (all further citations to the act will be to Florida Statutes Annotated).

2. Sections 376.12, Florida Statutes Annotated, provides in part:

> Liabilities of licensees.—Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages, any licensee and its agents or servants, including vessels destined for or leaving a licensee's terminal facility, who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the state for all costs of cleanup or other damage incurred by the state and for damages resulting from injury to others. In any suit to enforce claims of the state under this chapter, it shall not be necessary for the state to plead or prove negligence in any form or manner on the part of the licensee or any vessel. If the state is damaged by a discharge prohibited by this chapter it need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred.

"'Pollutants' shall include, but not be limited to, oil of any kind and in any form, gasoline, pesticides, ammonia, cholorine, and other hazardous materials." Fla. Stat. Ann. §376.031(7).

3. Terminal facilities and vessels are defined as:

> "Terminal facility" means any water front facility of any kind, other than vessels not owned or operated by such facility, and related appurtenances located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining oil or other pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of oil, petroleum products or their by-products, and other pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. With respect solely to application fees for licenses and annual license fees as required in this act, the words "terminal facility" shall not be construed to include the fuel storage tanks or other facilities of any marine service station having no more than twelve hundred (1200) gallons of pollutants in storage on the premises. Fla. Stat. Ann. §376.031(9) as amended, Laws of Florida, 71-243.

"Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs. Fla. Stat. Ann. §376.031(12).

4. See note 2, *supra*.

5. Section 376.14, Florida Statutes Annotated, provides, in part:

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall establish and maintain under rules and regulations prescribed by the department of natural resources, evidence of financial responsibility based on the capacity of the terminal facility or tonnage of the ship, the cargo carried, and other similar factors to which the vessel could be subjected under this chapter. Financial responsibility may be established and maintained by any one (1), or a combination, of the following methods acceptable to the department:

(a) Evidence of insurance;

(b) Surety bonds payable to the governor of the state, conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any person;

(c) Qualification as a selfinsurer; or

(d) Other evidence of financial responsibility satisfactory to the department.

(2) A bond filed with the department shall be issued by a bonding company authorized to do business in the state.

(3) Any claim for costs incurred by a terminal facility or vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility. Any claim for costs of cleanup, civil penalties, or damages by the state, and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility.

6. Section 376.07, Florida Statutes Annotated, provides in part:

Regulatory powers of department.—The department shall from time to time adopt, amend, repeal, and enforce reasonable regulations insofar as they relate to oil spills or discharges or the spills or discharges of other pollutants into the waters of this state or onto the coasts of this state.

(1) The regulations shall be adopted in accordance with the administrative procedure act, chapter 120.

(2) The department shall adopt regulations including, but not limited to, the following matters:

(a) Operation and inspection requirements for facilities, vessels, personnel, and other matters relating to licensee operations under

this chapter, and specifically requiring that vessels transporting pollutants within state waters shall maintain on board such containment gear as may be required by the department with a crew trained in the use of the gear.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by this chapter.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by this chapter in the removal of pollutants.

* * *

(f) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries and requirements that containment gear approved by the department be on hand and maintained by terminal facilities and refineries with adequate personnel trained in its use.

(g) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

(1) Any discharges of oil or other pollutants the vessel has had since leaving the last port;

(2) Any mechanical problem on the vessel which creates the possibility of a spill; and

(3) Any denial of entry into any port during the current cruise of the vessel.

7. Section 376.08(2), Florida Statutes Annotated, provides:

The port manager shall have the authority to board any vessel prior to its entry into port in order to ascertain the seaworthiness of the vessel and the presence of required containment gear. Upon being notified of a discharge the port manager shall have authority to direct the vessel to anchor immediately or move to a specific dock and deploy containment gear or to move to the open seas and to take such other measures as he deems necessary. The port manager shall have the additional duty to inspect any terminal facility in his port to determine that adequate containment gear is on hand at the terminal facility.

8. Section 376.08(3), Florida Statutes Annotated, provides:

A port manager who refuses entry of any vessel into the port under his charge shall be required to notify all other ports in the state of his refusal of entry of that vessel.

9. "[T]he admiralty jurisdiction of the United States extends to all

waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate of foreign water commerce, whether or not the particular body of water is wholly within a state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state." *Gilmore and Black, The Law of Admiralty*, §1-11, at 28-29 (1957) and cases cited therein.

Arguably, this would include land-locked lakes which are "navigable-in-fact" in interstate commerce.

10. The "Necessary and Proper Clause" of the United States Constitution (Article I, Section 8, Clause 18), read in context with the "Admiralty Clause" (Article III, Section 2, Clause 3) confers upon Congress the power to enact legislation in the maritime field. *Knickerbocker Ice Company v. Stewart*, 253 U.S. 149 (1920); *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917).

11. 33 U.S.C. §1161 *et seq.*

12. 33 U.S.C. §1161(b)(1).

13. The amount of liability of a vessel is limited to $100 per gross ton or $14,000,000 whichever is less. The liability of an onshore or offshore facility is limited to $8,000,000. 33 U.S.C. § 1161(f) (1), (2) and (3).

14. 33 U.S.C. §1161(f)(1), (2) and (3).

15. 33 U.S.C. §1161(p).

16. 33 U.S.C. §1161(j).

17. 33 U.S.C. § 1162.

18. *Id.*

19. *Id.*

20. 33 U.S.C. §1161(f).

21. See note 2, *supra*. Section 376.11 establishes the Florida Coastal Protection Fund. One of the purposes of the fund is to provide moneys to be used by the Department of Natural Resources in cleaning up oil spills. The state's recovery of cleanup costs—by simply pleading and providing the fact of a discharge under Section 376.12—provides revenue for the fund. If the party causing the oil spill wants to contend that the discharge was caused by an act of God, for example, he must petition

the department *after* he has been held liable for the cleanup costs. If the Department, in the exercise of its discretion, concludes that the contention is well made, it may waive the State's right to reimbursement of the cleanup cost. Whether the petition is granted or not is a matter solely for the Department to decide, for its decision on the merits is not subject to judicial review, as Section 376.11(6)(b) provides:

> "The findings of the department shall be conclusive as it is the legislative intent that the waiver provided in this paragraph is a privilege conferred, not a right granted."

22. See notes 2 & 13 *supra* and accompanying text. The potential for conflict is equally present between the regulatory scheme envisioned by the Florida Act and present regulation under federal acts. Pursuant to the W.Q.I.A. the President was required to publish a National Contingency Plan to remove oil spills and to minimize damage and to promulgate regulations "consistent with maritime safety and with marine and navigation laws." 33 U.S.C. §1161(c), (j). These regulations are to cover, for example, the establishment of

> "procedures, methods, and requirements for equipment to prevent discharges of oil from vessels and from onshore facilities and offshore facilities and . . . governing the inspection of vessels carrying cargoes in order to reduce the likelihood of discharges of oil from such vessels . . . ." 33 U.S.C. §1161(j).

The Florida Act obligates the Department of Natural Resources to act in the same areas. See note 6 *supra*. The potential for conflict in these two regulatory schemes is obvious.

It is likely that regulations promulgated under the Florida Act would further be discordant with the Steamboat Inspection Act, Title 46, U.S.C. §361 *et seq.*, and regulations promulgated thereunder. Section 376.08(2), Florida Statutes Annotated, provides that

> "[t]he port manager shall have authority to board any vessel prior to its entry into port in order to ascertain the seaworthiness of the vessel and the presence of the required containment gear."

At the same time the Steamboat Inspection Act, together with the regulations issued pursuant thereto, sets up a detailed and comprehensive scheme, administered by the United States Coast Guard, for maintenance, inspection, and regulation of all vessels (except motor boats, which are otherwise provided for) propelled in whole or in part by mechanical or electrical power in the navigable waters of the United States. 46 U.S.C. §§361-62. The Federal scheme is in consonance with the International Convention for the Safety of Life at Sea, 1960, T.I.A.S., 16 U.S.T. 185, 536 U.N.T. S.2 27, which has been ratified or adhered to by all maritime nations, including the United States. Here again, conflict between the regulations under the Florida Act and the federal law appears unavoidable.

23. *See, e.g., Fireman's Fund Ins. Co. v. Standard Oil Co.*, 339 F.2d 148 (9th Cir. 1964); *Salaky v. Atlas Barge No. 3*, 208 F.2d 174 (2nd Cir. 1953); *California v. The Bournemouth*, 307 F.Supp. 922 (C.D.Cal. 1969); *Petition of New Jersey Barging Corp.*, 168 F.Supp. 925 (S.D.N.Y. 1958). Since the Congressional enactment of the Admiralty Extension Act in 1948 (46 U.S.C. §740) "all cases of damage or injury, to person or property, caused by a vessel on navigable water, *notwithstanding that such damage or injury be done or consummated on land*" (emphasis added) are considered maritime torts and thus within the admiralty jurisdiction. *Petition of New Jersey Barging Corp., supra.*

24. 168 F.Supp. 925, 937 (S.D.N.Y. 1958).

25. United States Limited Liability Act, 46 U.S.C. §183 *et seq.* No state statute can override this "Limitation Statute" within the territorial jurisdiction of the federal maritime law. In *Butler v. Boston & Savannah Steamship Co.*, 130 U.S. 527, 555 (1889), the Supreme Court observed:

> "The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country, and therefore it is co-extensive, in its operation, with the whole territorial domain of that law."

In holding that a Massachusetts wrongful death action, arising from a death occurring in the admiralty jurisdiction, was subject to the "Limitation Statute", the Court went on to say:

> "It is unnecessary to consider the force and effect of the statute of Massachusetts over the place in question. Whatever force it may have in creating liabilities for acts done there, it cannot neutralize or affect the admiralty or maritime jurisdiction or the operation of the maritime law in maritime cases. Those are matters of national interest. If the territory of the state technically extends a marine league beyond the seashore, that circumstance cannot circumscribe or abridge the law of the sea." 130 U.S. at 557-58.

26. *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917).

27. *Id.* at 216.

28. *Id.* at 217-18.

29. *See*, Currie, *"Federalism and the Admiralty," The Supreme Court Review 1960,* 158 at 166-73.

30. 398 U.S. 375 (1970).

31. Fla. Stat. Ann. §768.01.

32. 358 U.S. 588 (1959).

33. In the *Knickerbocker* case the Court, speaking to the question of state legislative authority in the maritime field, said:

> "The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. *Moreover, it took from the States all power, by legislation or judicial decision,* to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations." 253 U.S. at 160-61. (Emphasis added).

34. Laws of Florida, 70-244 §23.

35. 298 U.S. 238, 313 (1936).

36. *Watson v. Buck*, 313 U.S. 387 (1941).

37. 137 So.2d 828 (Fla. 1962).

38. *Id.* at 830.

39. Fla. Stat. Ann. §376.021(3)(a), (4)(a).

SECOND REGULAR SESSION

AIR AND WATER POLLUTION CONTROL
CHAPTER 70-244

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 450

An Act relating to pollutants; providing definitions; prohibiting such pollution; providing for authority in the department of natural resources to act in preventing and controlling oil spills and other pollution; authorizing the department to provide employees and equipment in ports and other places; providing for recovery of cost in controlling and cleaning pollution; providing for licenses for terminal facilities, and for fees and exceptions; creating Florida coastal protection fund; providing for strict liability; providing for criminal and civil penalties; providing for the removal of derelict vessels by the state; providing for cooperation and coordination of all state agencies; authorizing the department of natural resources to require by rules and regulations that terminal facilities and vessels establish and maintain evidence of financial responsibility to reimburse the state and private citizens for damages caused by discharges of pollutants; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title

This act shall be known as "the oil spill prevention and pollution control act."

Section 2. Legislative intent

(1) The legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.

(2) The legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority and that such use can only be served effectively by

maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) The legislature further finds and declares that the transfer of pollutants between vessels, between onshore facilities and vessels and between offshore facilities and vessels within the jurisdiction of the state and state waters is a hazardous undertaking; that spills, discharges and escape of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state; to owners and users of shorefront property; to public and private recreation; to citizens of the state and other interests deriving livelihood from marine related activities; and to the beauty of the Florida coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as herein set forth and that such state interests outweigh any economic burdens imposed by the legislature upon those enaged in transferring pollutants and related activities.

(4) The legislature intends by the enactment of this legislation to exercise the police power of the state through the department of natural resources by conferring upon said department power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; and to establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(5) The legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health and providing for the public safety, and that the state's interest in

such preservation outweighs any burdens of absolute liability imposed by the legislature upon those engaged in transferring pollutants and related activities.

(6) The legislature further declares that is is the intent of this act to support and complement applicable provisions of the federal water quality improvement act of 1970,[1] specifically those provisions relating to the national contingency plan for removal of oil and other pollutants.

[1] 33 U.S.C.A. §1151 et seq.

Section 3. Definitions

When used in this act, unless the context clearly requires otherwise:

(1) "Department" means the department of natural resources.

(2) "Director" means the executive director of the department of natural resources.

(3) "Barrel" means forty-two (42) U.S. gallons at sixty degrees (60°) Fahrenheit.

(4) "Other measurements" means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(5) "Discharge" means any spilling, leaking, seeping, pouring, emitting, emptying, or dumping.

(6) "Fund" means the Florida coastal protection fund.

(7) "Pollutants" shall include but not be limited to oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and other hazardous materials.

(8) "Pollution" means the presence in the outdoor atmosphere or waters of the state of any one (1) or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(9) "Terminal facility" means any waterfront facility of any kind, other than vessels not owned or operated by such facility, and related appurtenances located on land, including

submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining oil or other pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility, or a governmental or quasi-givernmental body. A vessel shall be considered a terminal facility only in the event of a ship to ship transfer of oil, petroleum products, their by-products, and other pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility.

(10) "Owner or operator" means any person owning or operating a terminal facility whether by lease, contract, or any other form of agreement.

(11) "Transferred" includes both onloading and offloading between terminal and vessel and vessel to vessel.

(12) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

(13) "Port manager" means the manager or director of the port or his designee, to be approved by the department, to carry out the requirements of this act.

(14) "Person in charge" means the person on the scene who is in direct, responsible charge of a terminal facility or vessel from which oil or other pollutants are discharged when the discharge occurs.

(15) "Discharge cleanup organization" means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the state, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of oil and other pollutants through cooperative efforts and shared equipment and facilities.

Section 4. Pollution and corruption of waters and lands of the state prohibited

The discharge of oil, petroleum products, their by-products, and other pollutants into or upon any coastal waters,

estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state is prohibited.

Section 5. Powers and duties of the department

(1) The powers and duties conferred by this act shall be exercised by the department of natural resources and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The department of air and water pollution control is directed to cooperate with the department of natural resources and to offer consultative services, enforcement, prosecution, and technical advice to the department. The department may call upon any other state agency for consultative services and technical advice and the said agencies are directed to cooperate in said request.

(2) The powers and duties of the department under this act shall extend to the boundaries of the state described in article II, section 1 of the constitution of Florida.

(3) Licenses required under this act shall be issued from the department subject to such terms and conditions as are set forth in this act and as set forth in rules and regulations promulgated by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under this act, it shall be the duty of the department of natural resources to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the government of the United States under any applicable federal act.

Section 6. Operation without license prohibited

(1) No person shall operate or cause to be operated a terminal facility as defined in this act without a license.

(2) Licenses shall be issued on an annual basis and shall expire on December 31 annually, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of this act.

(3) As a condition precedent to the issuance or renewal of a license the department shall require satisfactory evidence that the applicant has implemented or is in the process of implementing state and federal plans and regulations for

control of pollution related to oil, petroleum products, their byproducts and other pollutants and the abatement thereof when a discharge occurs.

(4) Licenses issued to any terminal facility shall include vessels used to transport oil, petroleum products, their by-products, and other pollutants between the facility and vessels within state waters.

(5) The director may require, in connection with the issuance of a terminal facility license, the payment of a reasonable fee for processing applications for registration certificates. Such fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining such certificates and reasonable inspections; provided, however, such fee shall not exceed $250.00 per terminal facility per year.

(6) Within three (3) months of the effective date of this act every owner or operator of a terminal facility shall obtain a license. The department shall issue a license upon the showing that the said registrant can provide all necessary equipment to prevent, contain and remove discharges of oil and other pollutants.

(7) On or after a date to be determined by the director, but in no case later than ninety (90) days after the effective date of this act, no person shall operate or cause to be operated any terminal facility without a terminal facility registration certificate issued by the director. No registration certificate shall be valid for more than one (1) year unless revalidated by the director. Each applicant for a terminal facility registration certificate shall pay the annual license fee and shall submit information, in a form satisfactory to the director, describing the following:

(a) The barrel or other measurement capacity of such terminal facility.

(b) All containment and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices, to which such facility has access, whether through direct ownership, by contract, or by membership in an approved discharged cleanup organization.

(c) The terms of agreement and operation plan of any such discharge cleanup organization to which the owner or operator of such terminal facility belongs.

(8) Upon showing of satisfactory containment and cleanup capability under this section, and upon payment of any registration fee required by the director under this act and the license fee the applicant shall be issued a registration certificate covering such terminal facility and related appurtenances, including vessels as defined in this act.

Section 7. Regulatory powers of department

The department shall from time to time adopt, amend, repeal, and enforce reasonable regulations insofar as they relate to oil spills or discharges or the spills or discharges of other pollutants into the waters of this state, or onto the coasts of this state.

(1) Such regulations shall be adopted in accordance with the administrative procedure act, chapter 120, Florida Statutes.

(2) The department shall adopt regulations including but not limited to the following matters:

(a) Operating and inspection requirement for facilities, vessels, personnel and other matters relating to licensee operations under this act and specifically requiring that vessels transporting pollutants within state waters shall maintain on board such containment gear as may be required by the department with a crew trained in the use of such gear.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by this act. Specifically, the pilot and the master of a vessel causing a discharge shall be required to immediately report the discharge to the port manager and to the nearest coast guard station. The port manager, on being notified of a discharge, shall immediately notify the response team of the department and the coast guard and shall keep them fully informed of the need for containment equipment and emergency action.

(c) The port manager shall have the authority to board any vessel prior to its entry into port in order to ascertain the seaworthiness of the vessel and the presence of required

containment gear. Upon being notified of a discharge the port manager shall have authority to direct the vessel to immediately anchor or move to a specific dock and deploy containment gear or to move to the open seas and to take such other measures as he deems necessary. The port manager shall have the additional duty to inspect any terminal facility in his port to determine that adequate containment gear is on hand at the terminal facility.

(d) Procedures, methods, means, and equipment to be used by persons subject to regulation by this act and to be used in the removal of pollutants.

(e) Development and implementation of criteria and plans to meet oil petroleum, and other pollution occurrences of various degrees and kinds.

(f) The establishment of eleven (11) regional control districts, one for each of the eleven (11) deep water ports of the state, with a response team in each district and the establishment of rules and regulations to meet the particular requirements of each such district. The department shall create a state response team which shall be responsible for creating and maintaining a contingence plan of response, organization, and equipment for handling emergency cleanup operations. The state plans shall include detailed emergency operating procedures for the state as a whole and for the eleven (11) regional control districts, and the team shall from time to time conduct practice alerts. These plans shall be filed with the governor, all coast guard stations in the state and with the head of each regional team. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including but not limited to an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every phase of the plan, a list of available sources of supplies necessary for cleanup and a designation of priority zones within each region to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the federal government but is directed to cooperate with any federal cleanup operation.

(g) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries, and shall require that containment gear approved by the department be on hand and maintained by terminal facilities, and refineries with adequate personnel trained in its use.

(h) Requirements that, proor to being granted entry into any port in this state, the master of a vessel shall report:

1. Any discharges of oil or other pollutants the vessel has had since leaving the last port.

2. Any mechanical problem on the vessel which creates the possibility of a spill.

3. Any denial of entry into any port during the current cruise of the vessel.

(i) A port manager who refuses entry of any vessel into the port under his charge shall be required to notify all other ports in the state of his refusal of entry of that vessel.

(j) Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this action.

Section 8. Removal of prohibited discharges

(1) Any person discharging pollutants as prohibited by section 4 shall immediately undertake to remove such discharge to the department's satisfaction. Notwithstanding the above requirement the department may undertake the removal of such discharge and may contract and retain agents who shall operate under the direction of the department.

(2) Whenever oil or any other pollutant is discharged from any terminal facility or vessel in violation of section 4 of this act, the person in charge of such terminal facility or vessel shall promptly remove, or arrange for the removal of, such oil or other pollutant. If the person in charge fails so to act, the director may arrange for the removal of such pollutant; provided that, if such oil or other pollutant was discharged

into or upon the navigable waters of the United States, the director shall act in accordance with the national contingency plan for removal of oil or other pollutant established pursuant to the federal water quality improvement act of 1970 and the costs of removal incurred by the director shall be paid in accordance with the applicable provisions of said law.

(3) In the event of discharge, the source of which is unknown, any local discharge cleanup organization shall, upon the request of the director or his designee, immediately contain and remove such discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the director or his designee, shall be contstrued as an admission of liability for such discharge.

(4) No person who voluntarily, or at the request of the director or his designee, renders assistance in containing or removing oil or other pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in ths act shall affect in any way the right of any person who renders assistance in containing or removing oil or other pollutants to reimbursement for the costs of such containment or removal under the applicable provisions of the federal water quality improvement act of 1970[1] or any rights which said person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of such oil or other pollutants.

[1] 33 U.S.C.A. §1151 et seq.

Section 9. Personnel and equipment

The department shall establish and maintain at such ports within the state, and other places as it shall determine, such employees and equipment, other than such equipment furnished by the licensee, as in its judgment may be necessary to carry out the provisions of this act. The department may employ and prescribe the duties of such employees, subject to the rules and regulations of the division of personnel and

retirement of the department of administration. The salaries of such employees and the cost of such equipment shall be paid from the Florida coastal protection fund established by this act. The department shall periodically consult with other departments of the state and specifically with the department of air and water pollution control relative to procedures for the prevention of discharges of oil and other pollutants into the coastal waters of the state from off-shore drilling production facilities.

Section 10. Enforcement, penalties

Whoever violates any provisions of this act or any rule, regulations, or order of the department made hereunder shall be punished by a civil penalty of not more than fifty thousand dollars ($50,000) to be assessed by the department. Each day that any violation continues constitutes a separate offense. The provisions of this section shall not apply to any discharge immediately reported and completely removed by a licensee in accordance with the regulations and orders of the department.

Section 11. Florida coastal protection fund

(1) The Florida coastal protection fund is established to be used by the department as a non-lapsing revolving fund for carrying out the purposes of this act. The fund shall be limited to the sum of five million dollars ($5,000,000). To this fund shall be credited all license fees, penalties, and other fees and charges related to this act, including administrative expenses, and costs of removal of discharges of pollution.

(2) Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this act shall be deposited with the treasurer to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Florida coastal protection fund.

(3) Each registrant shall obtain from the department a license for each of the terminal facilities of the registrant in

the state and shall pay therefor an annual license fee, the amount of which is to be determined by the department upon the basis of the total capacity of the terminal facility for oil and other pollutants, but in no event shall exceed five hundred dollars ($500.00). License fees for a part of a year shall be prorated.

(4) Whenever the balance in the fund has reached the limit provided under this act, and as long as it remains so, license fees shall be proportionately reduced to cover only administrative expenses.

(5) Moneys in the Florida coastal protection fund shall be disbursed for the following purposes and no others:

(a) Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this act.

(b) All costs involved in the abatement of pollution related to the discharge of oil, petroleum products, their by-products and other pollutants covered by this act and the abatement of other potential pollution hazards as authorized herein.

(c) All costs and expenses of the cleanup and rehabilitation of water fowl and other wildlife, whether performed by the department or any other state or local agency.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge jointly and severally all sums expended therefrom, including overdrafts, for the following purposes; provided that recoveries resulting from damage due to an oil pollution or other similar disaster shall be apportioned between the Florida coastal protection fund and the general revenue fund so as to repay the full costs to the general revenue fund of any sums disbursed therefrom as a result of such disaster:

(a) All costs and expenses expended under paragraphs (b) and (c) of subsection (5) of this act.

(b) Requests for reimbursement to the fund for the above costs if not paid within thirty (30) days of demand shall be turned over to the department of air and water pollution control which, in cooperation with the attorney general, shall undertake the collection.

(c) Upon petition of the person determined to be liable

for reimbursement to the fund for abatement costs under subsection (6) the department may, after hearing, waive the right to reimbursement to the fund from such person if the department finds that the occurrence was the result of any of the following:

1. An act of war.

2. An act of government, either state, federal, or municipal.

3. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

4. An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

The findings of the department shall be conclusive as it is the legislative intent that waiver provided in this act is a privilege conferred, not a right granted.

Section 12. Liabilities of licensees

Because it is the intent of this act to provide the means for rapid and effective cleanup and to minimize damages, any licensee and its agents or servants including vessels destined for or leaving a licensee's terminal facility who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the state for all costs of cleanup or other damage incurred by the state and for damages resulting from injury to others. In any suit to enforce claims of the state under this act, it shall not be necessary for the state to plead or prove negligence in any form or manner on the part of the licensee or any vessel. If the state is damaged by a discharge prohibited by this act it need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred. In addition to the civil penalty, the pilot and the master of any vessel or person in charge of any licensee's terminal facility who fail to give immediate notification of a discharge to the port manager and the nearest coast guard station shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not more than two (2) years or by a fine of

not more than ten thousand dollars ($10,000). The department shall, by rules and regulations, require that the licensee designate a person at the terminal facility who shall be the person in charge of that facility for the purposes specified by this section.

Section 13. Emergency proclamation; governor's powers

(1) Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, petroleum products or their by-products, or any other pollutants, the governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the state. If the governor is unavailable, the lieutenant governor shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the state. A copy of such proclamation shall be filed with the secretary of state.

(2) In performing his duties under this act, the governor is authorized and directed to cooperate with all departments and agencies of the federal government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe.

(3) In performing his duties under this act, the governor is further authorized and empowered:

(a) To make, amend and rescind the necessary orders, rules and regulations to carry out this act within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

(b) To delegate any authority vested in him under this act, and to provide for the subdelegation of any such authority.

(4) Whenever the governor is satisfied that an emergency no longer exists, he may terminate the proclamation by another proclamation affecting the sections of the state covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the state and posted in such places as the governor, or the person acting in that capacity, deems appropriate.

Section 14. Terminal facilities and vessels required to file bond

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall establish and maintain, under rules and regulations prescribed by the department of natural resources, evidence of financial responsibility based on the capacity of the terminal facility or tonnage of the ship, the cargo carried, and other similar factors to which the vessel could be subjected under this act. Financial responsibility may be established and maintained by any one (1) of, or a combination of the following methods acceptable to the department:

(a) Evidence of insurance,

(b) Surety bonds payable to the governor of the state conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any other person,

(c) Qualification as a self-insurer, or

(d) Other evidence of financial responsibility satisfactory to the department.

(2) If a bond is filed with the department, then such bond shall be issued by a bonding company authorized to do business in the state.

(3) Any claim for costs incurred by such terminal facility or vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility. Any claim for costs of cleanup, civil penalties or damages by the state and any claim for damages by any injured person may be brought directly against the bond, the insurer, or against any other person providing evidence of financial responsiblity.

(4) Each owner or operator of a terminal facility or a vessel subject to the provisions of this act shall designate a person in the state as his legal agent for service of process under this act and such designation shall be filed with the secretary of state. In the absence of such designation the secretary of state shall be the designated agent for purposes of service of process under this act.

Section 15. Derelict vessels

(1) It is unlawful for any person, firm or corporation to store or leave any vessel in a wrecked, junked or substantially dismantled condition or abandoned upon any public waters or at any port in this state without the consent of the agency having jurisdiction thereof, or docked at any private property without the consent of the owner of such private property.

(2) The department is hereby designated as the agency of the state authorized and empowered to remove any derelict vessel from public waters in any instance when the same obstructs or threatens to obstruct navigation or contributes to air or water pollution or in any other way constitutes a danger or potential danger to the environment. This section shall constitute the authority of the department for such removal, but is not intended to be in contravention of any applicable federal act. The attorney general shall be the representative of the department of natural resources in such actions.

Section 16. Enforcement and penalties

It shall be unlawful for any person to violate any provision of this act or any rule, regulation or order of the department made hereunder. Violation shall be punishable by a civil penalty up to fifty thousand dollars ($50,000) to be assessed by the department. Each day during any portion of which such violation occurs constitutes a separate offense. Penalties assessed herein for a discharge shall be the only penalties assessed by the state and the assessed person or persons shall be excused from paying any additional penalty for water pollution assessable under chapter 403, Florida Statutes, for the same occurrence. The penalty provisions of this act shall not apply to any discharge promptly reported and removed by a licensee in accordance with the rules, regulations and order of the department.

Section 17. Reports to the legislature

The department shall include in its recommendations to each legislature specific recommendations relating to the operation of this act, specifically including a license fee

formula to reflect individual licensee experience, and a fee schedule based upon volatility and toxicity of petroleum products, their by products and other pollutants.

Section 18. Budget approval

The department shall submit to each legislature its budget recommendations for disbursements from the fund. Upon approval thereof, the comptroller shall authorize expenditures therefrom as approved by the department.

Section 19. County and municipal ordinances; powers limited

Nothing in this act shall be construed to deny any county or municipality by ordinance or by law from exercising police powers under any general or special act, and laws and ordinances promulgated in furtherance of the intent of this act to promote the general welfare, public health, and public safety shall be valid unless in direct conflict with the provisions of this act or any rule, regulations, or order of the department adopted under authority of this act; provided, however, that in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of this act.

Section 20.

Nothing in this act shall be deemed to apply to the storage or transportation of liquefied petroleum gas or to industrial effluents discharged into the waters or atmosphere of the state pursuant to a permit issued by department of air and water pollution control.

Section 21. Construction

This act, being necessary for the general welfare, the public health, and the public safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under this act and the federal water quality improvement act of 1970.[1]

[1] 33U.S.C.A. § 1151 et seq.

Section 22.

There is hereby appropriated from the general revenue fund one hundred thousand dollars ($100,000) to be transferred and deposited in the trust fund created in section 11 of this act. When the trust fund exceeds one million dollars ($1,000,000), then the total sum transferred originally from the general revenue fund shall be returned to the general revenue fund.

Section 23.

The provisions of this act are severable, and it is the intention to confer the whole or any part of the powers provided herein, and if any of the provisions of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 24. This act shall take effect July 1, 1970.

Approved by the Governor June 30, 1970.

Filed in Office Secretary of State June 30, 1970.

STATE OF FLORIDA
DEPARTMENT OF NATURAL RESOURCES
Division of Marine Resources

CHAPTER 16B-16.08

Chapter 70-244 - Oil Spill Bill
Financial Responsibility - Vessels

16B-16.08

(1) No vessel or barge, carrying oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, or other hazardous materials as cargo, shall use any port in Florida on or after March 1, 1961, for any purpose unless a certificate of financial responsibility has been issued by the Department covering such vessel or barge.

(2) Either owners or operators of vessels or barges subject

to Chapter 70-244, Laws of Florida, must establish and maintain with the Department evidence of financial responsibility in an amount not to exceed $100 per gross ton of such vessel or $5,000,000 whichever is lesser. Provided, however, that if an applicant is the owner of more than one vessel or barge subject to this rule, financial responsibility need only be established in an amount necessary to meet the maximum amount of financial responsibility to which the largest vessel or barge could be subjected hereunder. Nothing herein shall be construed to prohibit third parties from establishing evidence of financial responsibility for such owners or operators of vessels or barges.

(3) The financial responsibility herein required may be established and maintained by any one (1) of, or a combination of, the following methods acceptable to the Department:

(a) Evidence of insurance - conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any other person.

(b) Surety bonds payable to the governor of the State conditioned to pay all costs and expenses of the cleanup of any discharge as well as damages caused to the state and any other person.

(c) Qualification as self-insurer, or

(d) Other evidence of financial responsibility satisfactory to the Department.

(4) All applications, evidence, documents, and other statements required to be filed with the Department shall be in English, and any monetary terms shall be expressed in terms of United States currency. Such evidence of financial responsibility shall be on forms furnished by the Department upon request of the applicant.

(5) Where evidence of financial responsibility has been established, a separate certificate covering each vessel shall be issued evidencing the Department's finding of adequate financial responsibility to meet the minimum requirements of this rule.

General Authority
Chapter 70-244(7)
General Laws of Florida

Law Implemented
Chapter 70-244(14)
General Laws of Florida

33 U.S.C. § 1161.

§ 1161. Control of pollution by oil—Definitions

(a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership.

(8) "remove" or "removal" refers to removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, includ-

ing, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

Congressional declaration of policy; prohibition against discharge of oil; exceptions; rules and regulations; determination of harmful quantities of discharged oil, notification of United States of discharge of oil; penalties for failure to notify; procedure for imposition of civil penalties for knowingly discharging oil; withholding of clearance

(b) (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(2) The discharge of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (3) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as

amended, and (B) where perm
and locations or under such itted in quantities and at times
the President may, by reg circumstances or conditions as
harmful. Any regulations issu lation, determine not to be
consistent with maritime safe d under this subsection shall be
tion laws and regulations and y and with marine and naviga-
dards. applicable water quality stan-

(3) The President shall, by
as possible after April 3, 197 regulation, to be issued as soon
this section, those quantities , determine for the purposes of
such times, locations, circum f oil the discharge of which, at
harmful to the public health tances, and conditions, will be
including, but not limited r welfare of the United States,
public and private property, , fish, shellfish, wildlife, and
that in the case of the dis horelines, and beaches, except
waters of the contiguous zonarge of oil into or upon the
threaten the fishery resource, only those discharges which
threaten to pollute or conts of the contiguous zone or
territory or the territorial seibute to the pollution of the
determined to be harmful. of the United States may be

(4) Any person in charge
facility or an offshore facof a vessel or of an onshore
knowledge of any discharge ity shall, as soon as he has
in violation of paragraph (2) oil from such vessel or facility
notify the appropriate agency f this subsection, immediately
ment of such discharge. Any of the United States Govern-
immediately such agency uch person who fails to notify
conviction, be fined not mor such discharge shall, upon
for not more than one year than $10,000, or imprisoned
pursuant to this paragraph or both. Notification received
exploitation of such notificat information obtained by the
such person in any criminal n shall not be used against any
perjury or for giving a false st case, except a prosecution for

(5) Any owner or operator ement.
or offshore facility from whi of any vessel, onshore facility,
violation of paragraph (2) of oil is knowingly discharged in
a civil penalty by the Secret his subsection shall be assessed
the Coast Guard is operating y of the department in which
each offense. No penalty shal of not more than $10,000 for
be assessed unless the owner or

operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

National Contingency Plan for removal of discharged oil; provisions; revisions; compliance

(c) (1) Whenever any oil is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, the President is authorized to act to remove or arrange for the removal of such oil at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after April 3, 1970, the President shall prepare and publish a National Contingency Plan for removal of oil pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil discharges, including containment, dispersal, and removal of oil, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and

storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil pollution control equipment and material, and a detailed oil pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil to the appropriate Federal agency;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil; and

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

The President may, from time to time, as he deems advisable, revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

Marine disasters; creation of a substantial threat of a pollution hazard; removal or elimination of pollution hazard; removal or destruction of vessel; employment of personnel; expenses

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provision of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil.

Action by United States attorney to abate actual or threatened discharge of oil from an onshore or offshore facility; jurisdiction; nature of relief

(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

Liability of owner or operator of vessel, onshore facility, or offshore facility for discharge of oil; exceptions; amount of liability; procedure for recovery

(f) (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $100 per gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States

Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Secretary is authroized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil in violation of subsection (b) (2) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil is discharged in violation of subsection (b) (2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

Proof by owner or operator of vessel, onshore facility, or offshore facility of liability of third party for discharge of oil; exceptions to third party liability; amount of liability; procedure for recovery

(g) In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil is discharged in violation of subsection (b) (2) of this section proves that such discharge of oil was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil in violation of subsection (b) (2) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred, if such owner or operator were liable. If the United States can show that the discharge of oil in violation of subsection (b) (2) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

Preservation of rights of owner or operator of vessel, onshore facility, or offshore facility, or United States against any third party

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil.

Removal by owner or operator of vessel, onshore facility, or offshore facility of discharged oil; suit against United States for recovery of reasonable cost of removal; applicability to Outer Continental Shelf Lands Act; payment of judgment

(i) (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil is discharged in violation of subsection (b) (2) of this section acts to remove such oil in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission was or was not negligent, or of any combination of the foregoing clauses.

(2) The provisions of this subsection whall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the fund established pursuant to subsection (k) of this section.

Issuance of rules and regulations consistent with the National Contingency Plan; compliance; imposition of civil penalties for violations; amount

(j) (1) Consistent with the National Contingency Plan required by subsection (c) (2) of this section, as soon as practicable after April 3, 1970, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil, (B) establishing criteria for the development and implementation of local and regional oil removal contingency plans, (C) establishing procedures, methods, and requirements for equipment to prevent discharges of oil from vessels and from onshore facilities and offshore facilities, and (D) governing the inspection of vessels carrying cargoes of oil and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from such vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulation, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

Authorization of appropriations

(k) There is hereby authorized to be appropriated to a

revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (i), and (*l*) of this section and section 1162 of this title. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

Administration of oil pollution control; delegation of authority by President; availability of appropriations; utilization of personnel, services, and facilities

(*l*) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal department, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section and section 1162 of this title. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

Enforcement of provisions

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

Jurisdiction and venue

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i) (l) of this section, arising under this section. In the case of Guam, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

Existing liability for damages for oil discharge or removal not affected or modified; power of State or political subdivision thereof to impose requirements or liabilities for oil discharge not preempted; existing Federal, State, or local authority or law not affected or modified

(*o*) (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

Financial responsibility of vessels; amount; establishment; effective date; administration of provisions; claim for costs against insurer; study and report on need for financial responsibility of vessels, and onshore and offshore facilities

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective one year after April 3, 1970. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after April 3, 1970. Regulations necessary to implement this subsection shall be issued within six months after April 3, 1970.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by

the owner or operator.

(4) The Secretary of Transportation, in consultation with the Secretaries of Interior, State, Commerce, and other interested Federal agencies, representatives of the merchant marine, oil companies, insurance companies, and other interested individuals and organizations, and taking into account the results of the application of paragraph (1) of this subsection, shall conduct a study of the need for and, to the extent determined necessary—

(A) other measures to provide financial responsibility and limitation of liability with respect to vessels using the navigable waters of the United States;

(B) measures to provide financial responsibility for all onshore and offshore facilities; and

(C) other measures for limitation of liability of such facilities;

for the cost of removing discharged oil and paying all damages resulting from the discharge of such oil. The Secretary of Transportation shall submit a report, together with any legislative recommendations, to Congress and the President by January 1, 1971.

June 30, 1948, c. 758, § 11, as added Apr. 3, 1970, Pub.L. 91-224, Title I, § 102, 84 Stat. 91.

§ 1161. Control of pollution by oil

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Financial responsibility of vessels; amount; establishment; effective date; administration of provisions; claim for costs against insurer; study and report on need for financial responsibility of vessels, and onshore and offshore facilities

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall

establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such such vessel, financial responsibility need only be established to meet the maximum liability which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

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As amended Dec. 31, 1970, Pub.L. 91-611, Title I, § 120, 84 Stat. 1823.

46 U.S.C. § 183.

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of enging room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: *Provided,* That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity

or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. R.S. § 4283; Aug. 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.

46 U.S.C. § 740

CHAPTER 19A.–ADMIRALTY AND MARITIME JURISDICTION

§ 740. Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided*, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided further*, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. June 19, 1948, c. 526, 62 Stat. 496.

ARTICLE III
UNITED STATES CONSTITUTION

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States; between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX.
UNITED STATES CONSTITUTION

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X
UNITED STATES CONSTITUTION

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.